

## Tennessee Valley Authority 2022 Chief FOIA Officer Report

### Section 1: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying DOJ's [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.

#### **A. FOIA Leadership**

1. The FOIA requires each agency to designate a Chief FOIA Officer who is a senior official at the Assistant Secretary or equivalent level. See 5 U.S.C. § 552(j)(1) (2018). Is your agency's Chief FOIA Officer at this level? **Yes.**
2. Please provide the name and title of your agency's Chief FOIA Officer. **Mr. Buddy Eller, Vice President, Communications & Public Relations, Tennessee Valley Authority.**

#### **B. FOIA Training**

3. The FOIA directs agency Chief FOIA Officers to ensure that FOIA training is offered to agency personnel. See 5 U.S.C. § 552(a)(j)(2)(F). Please describe the efforts your agency has undertaken to ensure proper FOIA training is made available and used by agency personnel. **TVA's FOIA professionals participate in training offered by Department of Justice and organizations such as American Society of Access Professionals every year. Individual training and counsel is provided by the FOIA Officer and TVA's primary FOIA attorney to non-FOIA agency personnel as needed.**
4. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend substantive FOIA training during the reporting period such as that provided by the Department of Justice? **Yes.**
5. If yes, please provide a brief description of the type of training attended or conducted and the topics covered. **Attended American Society of Access Professionals (ASAP) National Training Conference in May 2021 and participated in other online training throughout the year. Subscribe to Access Reports newsletter covering FOIA and Privacy Act topics. Other topics covered in training include procedural matters, FOIA exemptions, federal records management, and updates and discussion on current FOIA litigation and issues of interest to FOIA professionals and requesters.**
6. Please provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period. **100%**
7. 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. **N/A.**

8. Did the personnel at your agency who have FOIA responsibilities attend training in federal records management during this reporting period? **Yes.**

### **C. Outreach**

9. Did your FOIA professionals engage in any outreach or dialogue, outside of the standard request process, with the requester community or open government groups regarding your administration of the FOIA? Please describe any such outreach or dialogue, and, if applicable, any specific examples of how this dialogue has led to improvements in your agency's FOIA administration. **No.**

### **D. Other Initiatives**

10. Describe any efforts your agency has undertaken to inform non-FOIA professionals of their obligations under the FOIA. In particular, please describe:

- how often and in what formats your agency provides FOIA training or briefings to non-FOIA staff;

**The FOIA Officer and TVA's primary FOIA attorney provide briefings and counsel to non-FOIA personnel as needed through individual and small group meetings. In addition, TVA's standard operating procedures governing communications incorporate the presumption of openness and outline the responsibilities of all agency personnel to comply with the requirements of FOIA.**

and

- if senior leaders at your agency received a briefing on your agency's FOIA resources, obligations and expectations during the FOIA process? **The TVA FOIA Officer and TVA's primary FOIA attorney provide briefings and counsel to TVA personnel, including senior leaders, regarding TVA's FOIA program and administration as needed.**

11. Optional -- If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

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

DOJ's [FOIA Guidelines](#) emphasize 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.

1. For Fiscal Year 2021, 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 2021 Annual FOIA Report. **8.78 days.**

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, according to Section VIII.A. of your agency's Fiscal Year 2021 Annual FOIA Report, 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. The FOIA Improvement Act of 2016 required all agencies to update their FOIA regulations within 180 days. In 2016, OIP issued Guidance for Agency FOIA Regulations and the accompanying Template for Agency FOIA Regulations to assist agencies in updating their regulations in accordance with the statute. Has your agency updated its FOIA regulations in accordance with the FOIA Improvement Act of 2016? If not, what is your agency's plan to update your regulations? **TVA's regulations have been updated.**

4. Standard Operating Procedures (SOPs) generally document your agency's internal processes for administering the FOIA beyond your FOIA regulations and FOIA Reference Guide. As noted in OIP's [guidance](#), having SOPs can improve the consistency and quality of an agency's FOIA process. SOPs can also serve as a significant resource for incoming FOIA professionals and a way to preserve much of the agency's institutional knowledge on administering the FOIA from how to handle requests from start-to-finish, to identifying and making proactive disclosures, to maintaining a FOIA website. Does your agency have up-to-date internal SOPs for your FOIA administration? **Yes.**

5. If not, please provide a timeline for when your agency plans to develop or update its SOPs. **N/A.**

6. Has your agency established alternative means of access to first-party requested records outside of the FOIA process? **Yes. Some first party requests can be made directly to agency record holders.**

7. If yes, please provide examples. If no, please explain if such opportunities exist at your agency and whether there are any challenges in establishing alternative means of access. **TVA has established procedures through which individuals seeking information related to them, such as employment or personnel records, may contact the relevant TVA business unit directly. TVA's FOIA staff is not involved in responding to such requests.**

8. Did your agency conduct a self-assessment of its FOIA administration during the reporting period? If so, please describe the self-assessment methods used, such as analyzing Annual Report or raw data, using active workflows and track management, reviewing and updating processing procedures, etc. In addition, please specifically highlight any data analysis methods or technologies used to assess your agency's FOIA program. **TVA continually assesses its FOIA program for efficiency improvements and to ensure compliance with all requirements. Data is analyzed through reporting available from the request tracking system. We have also used the self assessment tool provided by OIP to assist in identifying gaps and needed improvements.**

9. The FOIA Improvement Act of 2016 requires additional notification to requesters about the services provided by the agency's FOIA Public Liaison. Please provide an estimate of the number of times requesters sought assistance from your agency's FOIA Public Liaison during FY 2021 (please provide a total number or an estimate of the number). **FOIA requesters sought assistance from TVA's FOIA Public Liaison twice during the reporting period.**

10. Has your agency reviewed its FOIA-related staffing capabilities to identify resources needed to respond to current and anticipated FOIA demands? **Yes.**

11. Optional -- Please describe:

- Best practices used to ensure that your FOIA system operates efficiently and effectively.

**TVA has used a COTS and database to improve tracking requests, reporting and data analysis.**

- Any challenges your agency faces in this area.

**Managing workload while implementing improvements in program administration.**

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

The Department of Justice has long 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.

1. Please describe what steps your agency takes to identify, track, and post (a)(2) proactive disclosures. **The FOIA Officer regularly reviews TVA's FOIA Reading Room and posts updates and new information as it becomes available.**

2. Provide examples of any material that your agency has proactively disclosed during the past reporting year, including records that have been requested and released three or more times in accordance with 5 U.S.C. § 552(a)(2)(D). Please include links to these materials as well. **TVA's website is updated with new information daily. Examples of items of public interest include but are not limited to:**

**Financial information, including SEC filings:**

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

**Environmental Reviews:**

<https://www.tva.com/environment/environmental-stewardship/environmental-reviews>

**Transmission Projects:**

<https://www.tva.com/energy/transmission/transmission-system-projects>

**TVA News:**

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

**Coal Ash:**

<https://www.tva.com/environment/coal-ash>

**Ways to contact TVA:**

<https://www.tva.com/about-tva/get-involved-stay-involved>

3. Does your agency disseminate common types of material outside of FOIA, including in online databases where the public may access them? If yes, please provide examples and, if applicable, statutory authority. **Yes. An example is lake and river management information provided on TVA's website and a mobile application. Data is continually updated and includes lake levels, river elevations, rain gauge data, stream flows and release schedules and recreation information which is of wide interest to the public in the Tennessee Valley.**

<https://www.tva.com/environment/lake-levels>

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

**TVA completely overhauled its website in 2020 to make it more useful and continues to refine areas that need improvement. We are committed to ensuring that the platform is accessible to all special needs users, and are continuously implementing improvements to increase accessibility.**

5. If yes, please provide examples of such improvements. In particular, please describe steps your agency is taking to post information in open, machine-readable, and machine-actionable formats, to the extent feasible. If not posting in open formats, please explain why and note any challenges.

**Improvements include streamlined content, new search engine, mobile-first approach and improved feedback mechanisms for users. Furthermore we are working towards the WCAG2 (<https://www.w3.org/TR/WCAG20/>) standard to improve accessibility.**

6. Does your proactive disclosure process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.

**TVA's FOIA staff works with various business units as necessary within TVA to identify and prepare such proactive disclosures. As noted in the response to question 2 in Section III, TVA makes large amounts of information available on its website, among other channels. TVA's Communications organization, of which the FOIA staff is a part, assists TVA organizations such as Financial Services and the Office of General Counsel in reviewing and providing this information.**

Optional -- Please describe:

- Best practices used to improve proactive disclosures
- Any challenges your agency faces in this area

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

A key component of FOIA administration is using technology to make information more accessible. 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.

1. Has your agency reviewed its FOIA-related technological capabilities to identify resources needed to respond to current and anticipated FOIA demands? **TVA purchased and implemented a commercial**

**off-the-shelf (COTS) FOIA tracking and case management system in Fiscal Year 2020 replacing an outdated system. The new system includes a Public Access Link for submitting requests from TVA's website that are routed directly to the automated system along with other improvements in request processing and records management.**

2. Please briefly describe any new types of technology your agency began using during the reporting period to support your FOIA program. **We are continuing incremental improvements to FOIA administration using the new tracking system described above, among other things.**

3. OIP issued [guidance](#) in 2017 encouraging agencies to regularly review their FOIA websites to ensure that they contain essential resources, and are informative and user-friendly. Has your agency reviewed its FOIA website(s) during the reporting period to ensure it addresses the elements noted in the guidance? **Yes.**

4. Did all four of your agency's quarterly reports for Fiscal Year 2021 appear on your agency's website and on FOIA.gov? **Quarterly reports for Fiscal Year 2021 are posted in the FOIA section of the TVA website. We are working with OIP to post TVA's reports on FOIA.gov.**

5. 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 2022. **We are working with OIP to post TVA's reports on FOIA.gov.**

6. The FOIA Improvement Act of 2016 requires all agencies to post the raw statistical data used to compile their Annual FOIA Reports. Please provide the link to this posting for your agency's Fiscal Year 2020 Annual FOIA Report and, if available, for your agency's Fiscal Year 2021 Annual FOIA Report.

<https://www.tva.com/information/freedom-of-information/freedom-of-information-act-annual-reports>

7. Optional -- Please describe:

- Best practices used in greater utilizing technology – **use of updated database and tracking system.**
- Any challenges your agency faces in this area – **managing workload while implementing improvements in administration.**

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

The Department of Justice has 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 FY 2020 and 2021 Annual FOIA Reports.

#### **A. 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 your agency uses a separate track for simple requests, according to Annual FOIA Report section VII.A, was the agency overall average number of days to process simple requests twenty working days or fewer in Fiscal Year 2021? **Yes.**
3. Please provide the percentage of requests processed by your agency in Fiscal Year 2021 that were placed in your simple track. Please use the following calculation based on the data from your Annual FOIA Report: (processed simple requests from Section VII.C.1) divided by (requests processed from Section V.A.) x 100. **TVA processed 70.69% of total requests in 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.**

## **B. Backlogs**

When answering these questions, please refer to your Fiscal Year 2021 Annual FOIA Report, Sections XII.D-E, which compare the numbers of requests and appeals received, processed, and backlogged between Fiscal Years 2020 and 2021.

### **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2021, according to Annual FOIA Report Section XII.D.2, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020? **Yes.**
6. If not, according to Annual FOIA Report Section XII.D.1, did your agency process more requests during Fiscal Year 2021 than it did during Fiscal Year 2020? **N/A.**
7. If your agency's request backlog increased during Fiscal Year 2021, please 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: **N/A.**
  - An increase in the number of incoming requests.
  - A loss of staff.
  - An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
  - Impact of COVID-19 and workplace and safety precautions
  - Any other reasons – please briefly describe or provide examples when possible.
8. 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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged requests from Section XII.A) divided by (requests received from Section V.A) x 100. This number can be greater than 100%. If your

agency has no request backlog, please answer with "N/A." **Number of backlogged requests at the close of Fiscal Year 2021 is 4.24% of the total number of requests received.**

### **BACKLOGGED APPEALS**

9. If your agency had a backlog of appeals at the close of Fiscal Year 2021, according to Section XII.E.2 of the Annual FOIA Report, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2020? **TVA had no backlog of appeals at the close of Fiscal Year 2021.**

10. If not, according to section XII.E.1 of the Annual FOIA Report, did your agency process more appeals during Fiscal Year 2021 than it did during Fiscal Year 2020? **N/A.**

11. If your agency's appeal backlog increased during Fiscal Year 2021, please 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: **N/A.**

- An increase in the number of incoming appeals.
- A loss of staff.
- An increase in the complexity of the requests received. If possible, please provide examples or briefly describe the types of complex requests contributing to your backlog increase.
- Impact of COVID-19 and workplace and safety precautions.
- Any other reasons – please briefly describe or provide examples when possible.

12. 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 2021. Please use the following calculation based on data from your Annual FOIA Report: (backlogged appeals from Section XII.A) divided by (appeals received from Section VI.A) x 100. This number can be greater than 100%. If your agency did not receive any appeals in Fiscal Year 2021 and/or has no appeal backlog, please answer with "N/A." **N/A.**

### **C. Backlog Reduction Plans**

13. In the 2021 guidelines for Chief FOIA Officer Reports, any agency with a backlog of over 1000 requests in Fiscal Year 2020 was asked to provide a plan for achieving backlog reduction in the year ahead. Did your agency implement a backlog reduction plan last year? If so, describe your agency's efforts in implementing this plan and note if your agency was able to achieve backlog reduction in Fiscal Year 2021? **N/A.**

14. If your agency had a backlog of more than 1,000 requests in Fiscal Year 2021, please explain your agency's plan to reduce this backlog during Fiscal Year 2022. In particular, please also detail how your agency developed and plans to execute your backlog reduction plans. **N/A.**

### **D. Status of 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 2020 and Fiscal Year 2021 when completing this section of your Chief FOIA Officer Report.

#### **OLDEST REQUESTS**

15. In Fiscal Year 2021, did your agency close the ten oldest pending perfected requests that were reported in Section VII.E. of your Fiscal Year 2020 Annual FOIA Report? **Yes.**

16. 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 2020 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that. **N/A.**

17. Beyond work on the ten oldest requests, please describe any steps your agency took to reduce the overall age of your pending requests. **N/A.**

#### **TEN OLDEST APPEALS**

18. In Fiscal Year 2021, did your agency close the ten oldest appeals that were reported pending in Section VI.C.5 of your Fiscal Year 2020 Annual FOIA Report? **TVA did not have any appeals pending at the close of Fiscal Year 2020.**

19. 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 VI.C.(5) of your Fiscal Year 2020 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that. **N/A.**

20. Beyond work on the ten oldest appeals, please describe any steps your agency took to reduce the overall age of your pending appeals. **N/A.**

#### **TEN OLDEST CONSULTATIONS**

21. In Fiscal Year 2021, did your agency close the ten oldest consultations that were reported pending in Section XII.C. of your Fiscal Year 2020 Annual FOIA Report? **TVA did not have any consultations pending at the close of Fiscal Year 2020.**

22. 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 2020 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that. **N/A.**

#### **E. Additional Information on Ten Oldest Requests, Appeals, and Consultations & Plans**

23. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2020. **N/A.**

24. 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.**

25. 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 2022. **N/A.**

**Success Story**

TVA made improvements for FOIA requesters by implementing an online public access link for submitting requests. Requesters may check the status of their requests and receive documents through this online system.

The requests submitted online are routed to the request processing system for immediate receipt. Additional improvements include enhanced request tracking and reporting and document management capabilities. TVA implemented the automated tracking system in fiscal year 2020 and continues to make incremental improvements in FOIA processing.