



Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401

May 23, 2014

Craig E. Richardson, Esq. (Sent by e-mail without enclosures, as noted below)
Executive Director, Energy & Environment Legal Institute
and
Christopher C. Horner, Esq. (Sent by e-mail without enclosures, as noted below)
Free Market Environmental Law Clinic and
Energy & Environment Legal Institute
722 12th St., NW, 4th Floor
Washington, DC 20005

Dear Mr. Richardson and Mr. Horner:

This responds to your letters dated March 24, April 15, May 5 and May 6, 2014, to the Tennessee Valley Authority related to your request #4426 under the Freedom of Information Act (FOIA) 5 U.S.C. § 552 (2012). Your March 24, 2014 request sought copies of emails, text messages, and/or instant messages, dated June 1 through December 31, 2013, from two TVA offices, that contained specific combinations of keywords. These keywords appeared to involve discussions of TVA's use of coal or particular TVA coal plants. We have completed a computer search on the pertinent TVA records maintained by and for those offices and have found 60 pages of emails and attachments responsive to your request. There is duplicative overlap of some of the emails due the way email chains operate, and we are producing them all to insure that they are put in proper context and because it is the most cost effective way to make these documents available. The pages have been Bates-stamped for your convenience.

Portions of eight email messages are partially redacted on six of the 60 pages produced (two of the eight emails appear twice since they are duplicated in email chains). The eight emails are partially redacted pursuant to the deliberative process privilege under FOIA exemption 5, and two of the eight emails are partially redacted pursuant to the deliberative process privilege and the attorney-client privilege under exemption 5. The redactions are more specifically explained below:

- On pages 16 and 17 one email (in duplicate) is partially redacted (marked as Item 1 and 1A) pursuant to the deliberative process privilege since it reflects recommendations on the approach to be taken in a meeting with members of the Sierra Club who were opposed to keeping TVA's Gallatin Fossil Plant open.
- On page 30, three emails are partially redacted (Items 2-4) pursuant to the deliberative process privilege since they reflect recommendations on TVA's response to a social cost of carbon proposed by the Administration.
- On pages 33 and 36, one email sent at 12:52 p.m. on December 10, 2013, and one email (in duplicate) sent at 9:20 a.m. on December 10, 2013, are partially redacted (Item 5, 6 and 6A) pursuant to the deliberative process privilege since they offer analysis for recommendations on TVA's response to a presentation by a Clean Air Act regulator from Kentucky. The emails are also subject to attorney client privilege because they share client views on that matter with TVA attorneys.
- On page 52, two emails are partially redacted (Items 7 and 8) since they reflect recommendations on the approach to be taken by TVA staff in a meeting with the Regional Energy Resource Council on January 22-23, 2014.

The application of the deliberative process privilege to protect the information redacted from the above emails is necessary to allow the free and frank exchange of TVA staff viewpoints in moving toward agency decisions without fear of political, professional, or personal retaliation or attack, even when those staff views are not adopted by the agency. The application of the attorney-client privilege to protect the information redacted from two emails, is necessary to allow TVA managers to freely inform and consult with counsel and obtain legal assistance in developing an appropriate response to regulatory proposals. To the extent that other materials arguably covered by these privileges are otherwise disclosed in the materials produced, all privileges are expressly reserved beyond the extent of the specific materials produced.

With respect to the portions of your letters seeking to have your FOIA request responded to for reduced or no fees, I have reconsidered my decision of May 2, 2014. Agency attempts to understand unfamiliar requesters for purposes of assessing fees by asking questions have been expressly approved by the courts. Your request raised concerns due to corporate predecessors, relationships, and activities that are more complex than normally encountered in TVA's experience with FOIA requests.


Craig E. Richardson, Esq.
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While some matters are not fully clarified, I find on more thorough consideration that, on balance, it would be appropriate for TVA to provide a response to your request at no charge. As the information for this request is now disclosed at no charge, it appears your May 6, 2014, appeal of my May 2, 2014, decision to charge for your request is now moot. However, if you disagree, please let me know as soon as possible so that I may forward your appeal for processing. The check tendered in partial payment of fees by your letter of May 5 is returned with this letter.

If you have questions or need additional information, you may contact me at (865) 632-6945.

You may appeal this initial determination on the disclosure of records by writing to Ms. Janet J. Brewer, Vice President, Communications, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7C), Knoxville, TN 37902-1401. Any appeal must be received by Ms. Brewer within 30 days of the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Denise Smith". The signature is written in dark ink and is positioned above the printed name and title.

Denise Smith
TVA FOIA Officer

Enclosures