



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

May 2, 2014

Craig E. Richardson, Esq.  
Executive Director, Energy & Environment Legal Institute  
and  
Christopher C. Horner, Esq.  
Free Market Environmental Law Clinic  
722 12th St., NW, Suite 400  
Washington, DC 20005

Dear Mr. Richardson and Mr. Horner:

This responds to your letters dated April 15, 2014, requesting information under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). Your letters (each 10 pages) are aggregated into one request pursuant to 18 C.F.R. § 1301.10(k). You requested responses to FOIA requesters who sought a fee waiver or reduction where TVA requested additional information regarding their commercial interest or tax exempt status; and all initial determinations granting a request for a fee waiver or reduction, both from January 1, 2014, to the date the request is processed. This response does not include documents sent to TVA or received by your firms or their alter egos, since you already have copies of those.

We located a one-page letter from the period referenced that is responsive to your request. In that case, TVA did not grant the request for preferential fee treatment, and did not extend an opportunity to provide additional information that might support a grant of fee waiver, prior to reaching its decision. Instead, the requester was told of its appeal rights and that it could then present additional supporting information on a fee waiver. Enclosed is a copy of the responsive letter. Your interrelated firms are the only ones whose situation was so complicated, and the only ones accorded an opportunity to explain their situation prior to a decision on a fee waiver. No fee waivers or reductions were granted during the period referenced.

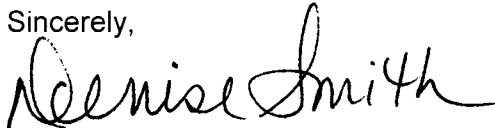
Because your latest requests concerned records that required minimal search time and processing, there is now no charge for these requests. This favorable treatment is discretionary and should not be considered precedential. This does not preclude TVA from determining that a subsequent request from your firms, or one of their alter egos should be considered in aggregation with this, or any other request for fee purposes.

Craig E. Richardson, Esq.  
Christopher C. Horner, Esq.  
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For convenience, as noted below, this letter is sent to the Energy & Environment Legal Institute/Free Market Environmental Law Clinic office that you share, with copies to the addresses shown on your letter and addresses you use for some of your other operations and affiliates.

You may appeal this initial determination of your FOIA request 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,



Denise Smith  
TVA FOIA Officer

Enclosure

cc:

Craig E. Richardson (By email to:  
craig.r@atinstitute.org;  
Richardson@EELegal.org;  
www.richardson-consulting.com)  
Energy & Environmental Legal Institute  
or  
American Traditions Institute, Western  
Tradition Institute, American Tradition  
Partnership, Coalition for Energy and  
the Environment, or  
Western Tradition Partnership  
2020 Pennsylvania Ave. NW #186  
Washington, DC 20006  
and  
Catholic Action Network, Inc.  
611 Pennsylvania Ave. SE Suite 287  
Washington, D.C.  
20003-4303  
and  
Richardson Consulting, LLC  
1610 Walden Dr.  
McLean, VA 22101

Christopher C. Horner, Esq. (By email to:  
chornerlaw@aol.com; chornor@cei.org)  
Free Market Environmental Law Clinic  
or  
George Mason Environmental Law Clinic;  
and  
Energy & Environmentl Legal Institute, or  
American Traditions Institute,  
and  
Cooler Heads Coalition, and  
Competitive Enterprise Institute  
1489 Kinross Lane  
Keswick, VA 22947



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

March 26, 2014

Mr. Garrett Oursland  
McCullough Research  
3816 SE Woodstock Boulevard  
Portland, OR 97202

Dear Mr. Oursland:

This responds to your letter dated February 28, 2014, requesting information under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). You requested three confidential memoranda that were exhibits to the minutes of the meeting of the TVA Board of Directors on April 26, 2012.

You also requested a fee waiver. To qualify for a fee waiver, a requester must show that:

(1) the disclosure of the requested information is not primarily in their commercial interest. TVA's FOIA regulations, 18 C.F.R. §1301.10(b)(1), define a commercial use request as a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation; and,

(2) the informative value of "disclosable portions of records" will "meaningfully" contribute to an "increased" understanding of the subject activities to a "reasonably broad audience of interested persons."

In addition, a requester seeking a fee waiver may demonstrate expertise in the subject matter and the ability and intent to effectively convey the information to the public, not merely listing ways the information could be made available.

If you wish to further pursue a fee waiver you would need to provide TVA with additional supporting documentation regarding your organization (which we understand works under contracts as an energy market and research consultant) and its potential uses of the information sought. Please see the factors to be examined in the granting of fee waivers which are set forth in TVA's FOIA regulations at 18 C.F.R. § 1301.10(k)(2) and (3). We will fully consider any pertinent information you submit to clarify or support your request for a fee waiver.

The three memoranda you requested are exempt from disclosure in their entirety pursuant to the deliberative process and attorney-client privileges, under FOIA exemption 5. In addition, substantial portions of the memoranda are exempt from

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disclosure pursuant to the government confidential commercial privilege under FOIA exemption 5, with some portions apparently exempt pursuant to FOIA exemption 4.

The deliberative process privilege under exemption 5 protects, among other things, pre-decisional records containing opinions and recommendations that are part of an agency's decision-making process. The subject memoranda are such records in that they were written by TVA officials to advise TVA's Board of Directors on particular decisions and courses of action.

The attorney-client privilege under exemption 5 protects confidential communications between attorneys and their clients who seek advice on legal issues. The subject memoranda reflect the advice of attorneys on legal matters.

The government confidential commercial privilege protects confidential business information that would likely cause competitive disadvantage to TVA in the conduct of its business, and the memoranda contain such information related to market information and strategies.

FOIA exemption 4 protects confidential commercial and financial information submitted to the government by an outside source if the release of such information is likely to cause substantial competitive harm to the submitter. It is noted that the confidential memoranda may contain contractor information and terms subject to express confidentiality commitments.

Given that disclosure reasonably would be expected to cause harm to the interests protected by the above exemptions, I find that the memoranda should not be disclosed.

Unless a fee waiver is granted, the fees to process your request are \$85.75. This amount represents 2.5 hours of professional search and review time at \$34.30 per hour. Please make your check payable to the "Tennessee Valley Authority" and mail to me in the enclosed self-addressed envelope.

You may appeal this initial determination of your FOIA request 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 black ink, appearing to read "Denise Smith", with a stylized flourish at the end.

Denise Smith  
TVA FOIA Officer