



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

April 8, 2014

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

Dear Mr. Richardson and Mr. Horner:

This concerns your letter of March 24, 2014, requesting information under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). You requested certain records from the "offices of the Executive Vice President and Chief Generation Officer or Joe Hoagland, Designated Federal Officer for the Regional Resource Stewardship Council." Your request has been assigned tracking number #4426.

You also requested a fee waiver asserting, among other things, that your firms qualify for recognition as news media and educational institutions, and that you have no commercial interest in the requested information. You provided over 20 pages containing legal arguments and advocacy regarding fee waivers. However, preferential treatment on fees, granted on the basis of news media, educational institution, or non-commercial status, should be based on specific and verifiable facts. Those were not entirely clear from the 27-page letter that you sent to me by facsimile, and TVA has not had opportunity to consider your firms' status in the past.

Through this letter and its attachment we seek to develop the facts necessary to make factually supported decisions regarding your firms' status. Since your firms appear to operate as interlocking not-for-profit vehicles, and to have made the request jointly, it appears that the request should be treated as one request, with one response provided to both firms, consistent with provisions of 18 C.F.R. 1301.10(h). Accordingly, we request information on these matters from both your firms. (If, however, the request was made only by the Energy & Environmental Legal Institute, with Free Market Environmental Law Clinic acting as counsel, we would only need supporting information from the Institute.)

OMB guidance states that in order to decide whether a request is commercial, agencies should evaluate the intended use of the information. TVA's FOIA regulations (18 C.F.R. § 1301) define a commercial-use request as one that seeks information for

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a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering such interests through litigation. Please provide factual information on this in response to the items listed under Section A on the attached sheet.

With regard to your claim of news media status, we found it difficult to understand exactly how your firms are engaged in legitimate newsgathering and reporting functions. In particular, it is not clear how your firms' activities can be distinguished from the information gathering, promotional, and public relations activities of other firms that engage in litigation and lobbying. Please provide factual information on this in response to the items listed under Section B on the attached sheet.

With regard to your claim of educational institution status, TVA's FOIA regulations state that to be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying educational institution and that the records are not sought for a commercial or private use, but are sought to further scholarly research. Please provide factual information on this in response to the items listed under Section C on the attached sheet.

Please provide your response by U.S. mail in the enclosed self-addressed envelope, or as an attachment to an email to foia@tva.gov, and enclose documents that explain, controvert, or qualify your claims. While you are working to provide us with specific facts that will help us better understand your firms' status as it pertains to the fee waiver request, we will begin the initial work to determine where any responsive records are stored and how they might be searched, in order to move this matter forward as quickly as possible.

Once we have completed our preliminary search for responsive documents, we should then be able to determine whether and to what extent the records meet the requirements set forth in TVA's FOIA regulations for a waiver or reduction of fees, depending upon your firms' factually supported status, and the public interest in the information. If appropriate, we will provide you with a fee estimate for any records that do not meet criteria for free disclosure. (See also e.g. 18 C.F.R. § 1301.10(k) (records that have already been made public may not meet these requirements)). If you wish, we can give your firms an opportunity to provide clarification in response to a proposed fee estimate. If you do not want such an opportunity, please let us know in your response to this letter.

TVA's FOIA regulations provide that FOIA requests that cannot be answered within 20 workdays are placed in a multi-track system. (See 18 C.F.R. § 1301.5). These are generally answered in the order they are received within each track. If we are able to reach a resolution on the issue of your status and applicable fees (if any), and if it appears your request will take longer than 20 business days to process, we will provide you an opportunity to modify the scope of your request in order to be processed faster.

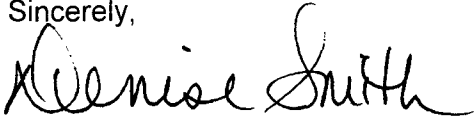
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This response does not constitute a denial of your request for a fee waiver. Until a resolution on fee issues is reached, your "request shall not be considered received." 18 C.F.R. § 1301.10(e)(i)(4). As an accommodation, we will begin preliminary scoping and processing of your request, and will then hold your request in abeyance for 30 days from the date of this letter, while we await the information on your firms' status, or until you inform me that you no longer wish to proceed with your FOIA request.

TVA is committed to providing information to the public in such a way that it serves both the letter and spirit of the Freedom of Information Act, in accordance with the Presidential policies referred to in your letter. Further, TVA will extend fee waivers in the interest of transparency and public understanding. However, we hope that you appreciate that it is important to have an auditable and factual basis for such determinations, before TVA provides records to firms making broad claims to the most preferential status, at the expense of TVA's customers, when requesters who agree to pay fees are charged for records at reasonable rates.

If you have questions or would like to discuss your request, you may contact me at (865) 632-6945.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Smith". The signature is fluid and cursive, with the first name "Denise" being more prominent than the last name "Smith".

Denise Smith
TVA FOIA Officer

Enclosure

ENCLOSURE

A. COMMERCIAL AND/OR LITIGATION ACTIVITIES

1. Do your firms' websites and newsletters accurately describe their litigation and public relations activities?
2. Do your firms' websites and newsletters accurately describe the manner in which information is sought under the Freedom of Information Act for use in their litigation and public relations activities?
3. Do your firms' representatives receive compensation in connection with those activities?
4. Do the expert witnesses employed by or associated as fellows and Board members for your firms receive compensation in connection with those activities?
5. When did the Internal Revenue Service grant 501(c)(3) status to (a) Energy & Environmental Legal Institute, and (b) Free Market Environmental Law Clinic, and are donations entitled to be treated as charitable donations when paid by check made to each of your firms? (Please explain why the requesting firm's websites represent that donations would have to be made George Mason's Environmental Law Clinic or the American Traditions Institute in order to receive tax deductible treatment.)
6. Please provide an itemized statement of the facts you consider pertinent to determining whether the litigation or public relations activities engaged in by your firms, their representatives, and witnesses, are commercial activities.

B. NEWS MEDIA STATUS

1. Do your firms maintain public websites other than www.eelegal.org, and www.fmelawclinic.org? (If so, please identify them.)
 2. Have your firms issued newsletters other than those posted on your firms' websites? (If so, please provide copies.)
 3. Do your firms' newsletters describe the interests, qualifications, and activities of their Board(s), attorneys, and staff?
 4. Do your firms' websites describe the interests, qualifications, or activities of their Board(s), attorneys, and staff?
 5. Do your firms' publications and websites accurately state your firms' interests in identifying customers and plaintiffs that your firms may represent?
 6. Please list the articles and books published or written (a) by your firms, and (b) by persons who write and publish those books and articles in their capacity as employees or associates for those firms.
 7. Please identify the articles and books listed in B.5, above, that do not describe the interests, qualifications, or activities of your firms, their Board(s), attorneys, and staff.
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8. Please provide an itemized statement of the facts you consider to be pertinent to determining the extent to which publication activities engaged in by your firms through newsletters, websites, articles, or books may be distinguishable from similar materials disseminated by law, lobbying, or public relations firms, and those associated with them, for promotional or public relations purposes.

9. What facts would distinguish law, public relations, or lobbying firms, which have promotional newsletters and websites, and whose members publish articles, reports, or books, and act as news sources, from news media?

C. EDUCATIONAL INSTITUTION STATUS

1. Describe the educational accreditations that have been obtained by each of your firms, and identify the accrediting body, and program accredited for each accreditation.

2. State the number of individual students who have been awarded semester credit hours by Free Market Environmental Law Clinic during the past 36 months.

3. State the total number of individual students who have been awarded continuing legal education credit hours during the past 36 months by virtue of completion of courses or programs in which Free Market Environmental Law Clinic has been accredited by state agencies.

4. Describe each course or program for which Free Market Environmental Law Clinic has been accredited, and continuing legal education credits have been awarded, by indicating the subjects, number of credit hours, instructor(s), location(s), date(s) offered, accrediting state, and cost of attendance. (Please provide a copy of brochures and curriculum summaries each such course.)

5. Was your request made on behalf of George Mason University Law School, or by a member of its regular staff authorized by that school to make such a request? (If so, please provide any written document showing such an authorization.)

6. Please provide an itemized statement of the facts you consider to be pertinent to determining the extent to which activities engaged in by your firms are different from other law and lobbying organizations with adjunct professors, which have paid or unpaid clerks, externs, or interns, and whose members publish in journals and instruct CLE courses.