

# Exhibit 3

August 18, 2022

Via Email to [foia@tva.gov](mailto:foia@tva.gov)  
and Certified Mail, Return Receipt Requested to:

TVA FOIA Appeals Official  
Tennessee Valley Authority  
400 W. Summit Hill Drive (WT 7C)  
Knoxville, TN 37902-1401

**RE: Appeal of TVA Response to FOIA Request #22-FOI-00003**

Under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center (“SELC”) appeals the Tennessee Valley Authority’s response to the above referenced FOIA request.<sup>1</sup> On October 4, 2021, SELC requested:

1. All records related to TVA’s understanding of, and actions in response to, Section 205(b)(i) of Executive Order 14008. Such records include, but are not limited to, records addressing the applicability of Executive Order 14008 Section 205(b)(i) to TVA activities.
2. All records related to TVA’s understanding of, and actions in response to, Section 5 of Executive Order 13990. Such records include, but are not limited to, records addressing the applicability of the Section to TVA’s activities.
3. All records related to TVA’s May 21, 2021, notification to Vojin Janjić at the Tennessee Department of Environment and Conservation that Executive Order 14008 “raises significant new questions for TVA about the availability of natural gas as a potential replacement for coal power generation at CUF.”<sup>2</sup>

TVA responded to the request on June 23, 2022, providing eight documents and withholding another thirty-one documents under FOIA Exemption 5.

TVA’s response indicated, without further record-specific elaboration, that “exemption 5 protects, among other things, confidential internal deliberations and draft documents that are part of an agency’s decision-making processes,” and that “TVA routinely protects this type of information from public disclosure in order to protect the openness and integrity of TVA’s deliberations and decision-making

---

<sup>1</sup> A copy of TVA’s final determination letter is included here as Attachment 1.

<sup>2</sup> A copy of SELC’s request is included here as Attachment 2.

processes.”<sup>3</sup> TVA also noted that “[s]ome of the withheld information is also exempt under the attorney-client privilege under exemption 5.”<sup>4</sup>

Generic assertions that responsive documents are of the kind an agency “routinely protects” do not suffice to withhold those documents under a FOIA exemption. TVA must release records—even ones that fall within a FOIA exemption—unless releasing the record would foreseeably harm an exemption-protected interest or another law prohibits disclosure.<sup>5</sup> The burden is on TVA to explain why a FOIA exemption is properly applied to the requested documents.<sup>6</sup> So to withhold records under Exemption 5, TVA must provide a detailed explanation, for specific records or groups of records, why disclosure would interfere with the openness and integrity of TVA’s deliberations and decision-making processes.<sup>7</sup>

SELC respectfully requests that TVA either release the thirty-one responsive records previously withheld or provide a detailed explanation, for specific records or groups of records, of how releasing the information would cause a foreseeable harm to an exemption-protected interest. If you have any questions regarding this appeal, please do not hesitate to contact me at (615) 921-9470 or [dmetzger@selctn.org](mailto:dmetzger@selctn.org).

Sincerely,

s/ Daniel J. Metzger

Daniel J. Metzger

Southern Environmental Law Center

---

<sup>3</sup> Final Determination at 1.

<sup>4</sup> Final Determination at 1.

<sup>5</sup> See *Jud. Watch, Inc. v. U.S. Dep't of Just.*, 2019 WL 4644029 at \*3 (D.D.C. Sept. 24, 2019) (“[T]he FOIA Improvement Act imposes a meaningful and independent burden on agencies to detail the specific reasonably foreseeable harms that would result from disclosure of certain documents or categories of documents.”); *Rosenberg v. U.S. Dep't of Def.*, 342 F. Supp. 3d 62, 73 (D.D.C. 2018) (“[T]he government must do more than perfunctorily state that disclosure of all the withheld information—regardless of category or substance—would jeopardize the free exchange of information between senior leaders within and outside of the [the agency].”); *Ecological Rights Found. v. FEMA*, No. 16-5254, 2017; WL 5972702, \*6 (N.D. Cal. Nov. 30, 2017) (“In failing to provide basic information about the deliberative process at issue and the role played by each specific document, [an agency] does not meet its burden of supporting its withholdings with detailed information pursuant to the deliberative process privilege.”).

<sup>6</sup> See *U.S. ex rel. Williams v. Renal Care Grp., Inc.*, 696 F.3d 518, 527 (6th Cir. 2012) (“Given that FOIA encourages complete disclosure, the [deliberative process] privilege may only be invoked with specificity and “detailed explanations,” and the burden lies with the agency to prove that disclosure would create a chilling effect.”).

<sup>7</sup> See *Rosenberg*, 2018 WL 4637363 at \*8 (rejecting agency’s “general assertion that disclosure of any of the information withheld under Exemption 5 ‘would jeopardize the free exchange of information ... within and outside of [the agency]’”).