

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

MELANIE FAIZER

Plaintiff,

v.

TENNESSEE VALLEY AUTHORITY

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Melanie Faizer (“Plaintiff” or “Ms. Faizer”), by and through her undersigned counsel, hereby alleges as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or the “Act”), for declaratory, injunctive, and other appropriate relief against the Tennessee Valley Authority (“Defendant” or “TVA”). The TVA has unlawfully withheld agency records requested by Plaintiff pursuant to FOIA.

PARTIES

2. Plaintiff Melanie Faizer is a journalist and professor who resides in Knoxville, Tennessee.

3. Pursuant to 16 U.S.C. § 831 *et seq.* (the Tennessee Valley Authority Act of 1933), Defendant TVA is an agency of the federal government within the meaning of 5 U.S.C. § 551 and 5 U.S.C. § 552(f) that has possession, custody, and/or control of records that Ms. Faizer seeks.

4. The TVA's headquarters and FOIA office are in Knoxville, Tennessee.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action and personal jurisdiction over the TVA pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

6. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

Background

7. The TVA has long been much more than a simple federal utilities provider. For years, the TVA has run economic incentives programs, offering private corporations a variety of benefits in exchange for bringing jobs to the regions that the TVA services. Knox News Staff, *TVA Keeps Its Economic Development Subsidies Secret* (Sept. 16, 2017), <https://perma.cc/9JZ9-8E6M>.

8. Local journalists and ordinary residents alike have questioned the pervasive secrecy of the TVA's economic incentives programs. *See id.* (reporting on community perspectives regarding the TVA's refusal to "reveal [to the public] the benefits it provides private investors as a matter of policy.").

9. Responding to TVA customers' increasing frustration with the TVA's lack of transparency, journalists have sought to understand whether the TVA's economic incentive partners have, in part, caused increased energy prices, grid strain, and quality of life disruptions that members of the public have experienced in recent years. *See, e.g.,* Melanie Faizer, *The Rise of Crypto Mines in the South Raises*

Concerns for the Electric Grid, Rates, Nat'l Pub. Radio (Feb. 23, 2024), <https://perma.cc/FWZ3-VWU3>.

10. One industry in particular, cryptocurrency mining, has raised concerns because the process of “mining” requires significant energy usage, but relatively few employees and therefore few new jobs.

11. Cryptocurrency mining involves operating computer servers that are capable of approving, processing, and clearing cryptocurrency transactions at extraordinarily high speeds, in turn consuming appreciable quantities of energy. Coinbase, *What is Mining?*, <https://www.coinbase.com/learn/crypto-basics/what-is-mining> (last visited: Apr. 12, 2024).

12. Cryptocurrency mining company Bitdeer has a facility in Knoxville, Tennessee, which employs around thirty individuals, yet “accounted for 9.4% of [a local utility’s] total electric sales in 2023.” Melanie Faizer, *Rise of Crypto Mines in the South Raises Concerns for Electric Grid and Rates*, WUOT (Feb. 2, 2024), <https://perma.cc/ZWG3-VBYX>.

13. Bitdeer is one of the economic incentive program grantees contracted with the TVA. *Id.*

14. As this Court has recognized, the public has a legitimate “interest in the inner workings of public utility providers like [the TVA].” *Perrusquia v. Tennessee Valley Auth.*, No. 3:22-CV-309, 2023 WL 6303013, at *6 (E.D. Tenn. Sept. 27, 2023). As such, Ms. Faizer has requested records under FOIA that would allow the public to understand the TVA’s inner workings, especially with respect to its economic

incentives programs, and to demand accountability from the “largest public power system in the United States.” *Id.* at *1.

Plaintiff’s FOIA Request

1. On April 12, 2023, Ms. Faizer submitted a FOIA request to the TVA via the TVA’s online FOIA portal seeking access to “agreements, grants or contracts entered into between [cryptocurrency mining company] Bitdeer and TVA and related email correspondence,” as well as “information on Bitdeer’s power use” (the “Request”).

2. The TVA acknowledged the Request the same day, assigning the Request tracking number 23-FOI-00108. A true and correct copy of the acknowledgement is attached hereto as Exhibit A.

3. On or about May 11, 2023, the TVA issued a determination in writing as to the Request (the “First Denial”). A true and correct copy of the cover letter of the First Denial is attached hereto as Exhibit B.

4. In the First Denial, the TVA stated that it “located one six-page incentive agreement responsive to” the Request, but it did not release the document to Ms. Faizer. Ex. B at 1.

5. The TVA claimed that the requested records were subject to withholding under FOIA Exemptions 4 and 5 (5 U.S.C. § 552(b)(4), 5 U.S.C. § 552(b)(5)). Ex. B at 1.

6. On or about May 25, 2023, Ms. Faizer timely appealed the TVA’s First Denial by letter (the “First Appeal”). A true and correct copy of the First Appeal is attached hereto as Exhibit C.

7. Ms. Faizer's First Appeal challenged the withholding of:
 - a. all available documents and communications regarding TVA's Economic Development Initiative;
 - b. all correspondence and communications between Carpenter Creek LLC (Bitdeer) and TVA related to Carpenter Creek's participation in TVA's Economic Development Initiative; and
 - c. all available documents and communications demonstrating how TVA verified Bitdeer's claim that it would repurpose underutilized industrial infrastructure to create jobs.

Ex. C at 2.

8. On or about October 20, 2023, the TVA issued correspondence and records in response to the Request and First Appeal (the "Second Denial"). A true and correct copy of the cover letter of the Second Denial is attached hereto as Exhibit D.

9. As part of the Second Denial, the TVA released "agreements and correspondence between Bitdeer and TVA" and redacted them in part under purported claims of "FOIA exemptions 4, 5 and 6." Ex. D at 1.

10. As part of the Second Denial, the TVA also withheld in full "31 items related to the credit agreement" between the TVA and Bitdeer, citing "FOIA exemption 4." *Id.*

11. On or about January 5, 2024, Ms. Faizer timely appealed the TVA's Second Denial in writing via email (the "Second Appeal"). A true and correct copy of the Second Appeal is attached hereto as Exhibit E.

12. In the Second Appeal, Ms. Faizer argued that the TVA improperly withheld portions of six of the records that the TVA released in response to her Request and the First Appeal (the “Challenged Records”). The TVA withheld portions of the Challenged Records under purported claims of FOIA Exemptions 4, 5, and 6 (5 U.S.C. § 552(b)(4), 5 U.S.C. § 552(b)(5), 5 U.S.C. § 552(b)(6)). Ex. E at 2–10.

13. On or about February 5, 2024, the TVA communicated by letter that its response to the Second Appeal was subject to a delay “due to the need to provide notice and consult with third parties regarding the withheld information.” A true and correct copy of this communication is attached hereto as Exhibit F.

14. On or about February 7, 2024, a TVA FOIA Officer notified Ms. Faizer’s counsel that the delay would likely not exceed ten additional days. A true and correct copy of this communication is attached hereto as Exhibit G.

15. On or about February 20, 2024, the TVA denied the Second Appeal (the “Third Denial”). A true and correct copy of the cover letter of the TVA’s Third Denial is attached hereto as Exhibit H.

16. In the Third Denial, the TVA stated that it had “removed certain redactions” to information in the Challenged Records, but continued to assert FOIA Exemptions 4, 5, and 6 to withhold other portions of the Challenged Records. *See* Ex. H at 1–7. The TVA re-released the Challenged Records to Plaintiff to reflect its updated withholdings.

CAUSE OF ACTION

**VIOLATION OF FOIA FOR
WRONGFUL WITHHOLDING OF AGENCY RECORDS**

17. Plaintiff repeats, realleges, and incorporates the allegations set forth in the foregoing Paragraphs 1 through 16 as though fully set forth herein.

18. The TVA is an agency subject to FOIA. 5 U.S.C. §§ 552(f), 551; 16 U.S.C. §§ 831 *et seq.*

19. The Request properly seeks records under FOIA that are within the possession, custody, and/or control of the TVA.

20. The Request complied with all applicable regulations regarding the submission of FOIA requests.

21. The TVA unlawfully withheld the redacted portions of the Challenged Records pursuant to claims of FOIA Exemption 4 (5 U.S.C. § 552(b)(4)). Neither Exemption 4, nor any other statutory exemption, justifies the TVA's redactions and the TVA's withholdings deprive Ms. Faizer of her legal rights under FOIA.

22. The TVA improperly withheld the redacted portions of three of the Challenged Records pursuant to claims of FOIA Exemption 5 (5 U.S.C. § 552(b)(5)). Neither Exemption 5, nor any other statutory exemption, justifies the TVA's redactions and the TVA's withholdings deprive Ms. Faizer of her legal rights under FOIA.

23. The TVA has also not sufficiently identified how disclosure of the redacted portions of the Challenged Records would foreseeably harm an interest

protected by a FOIA exemption and/or why disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A).

24. The TVA has improperly withheld agency records responsive to the Request, in violation of FOIA. 5 U.S.C. § 552(a)(3)(A)—specifically the redacted portions of the Challenged Records.

25. Ms. Faizer has or is deemed to have exhausted her administrative remedies with respect to the Request. 5 U.S.C. § 552(a)(6)(C)(i).

26. Accordingly, Ms. Faizer is entitled to declaratory and injunctive relief as to disclosure of the Challenged Records. The TVA must promptly disclose all of the Challenged Records without redactions.

REQUEST FOR RELIEF

WHEREFORE, Ms. Faizer respectfully requests that this Court:

- a) enjoin Defendant from withholding the redacted portions of the Challenged Records;
- b) issue a declaration that Ms. Faizer is entitled to disclosure of the Challenged Records without redactions;
- c) issue a declaration that Defendant's denial of the Request as limited to the Challenged Records violates its obligations under FOIA;
- d) order the TVA to provide unredacted copies of the Challenged Records, or copies with only those redactions the Court deems proper;
- e) award Plaintiff reasonable attorneys' fees and costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- f) grant such other relief as the Court may deem just and proper.

Dated: April 25, 2024

Respectfully submitted,

/s/ Paul R. McAdoo

Paul R. McAdoo, BPR No. 034066

REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

6688 Nolensville Rd., Ste. 108-20

Brentwood, TN 37027

Tel: (615) 823-3633

pmcadoo@rcfp.org