# Exhibit E

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January 5, 2024

VIA EMAIL

Buddy Eller
TVA Chief FOIA Officer and Appeals Official
Tennessee Valley Authority
1101 Market Street, LP 6C
Chattanooga, TN 37402
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**RE: Freedom of Information Act Appeal, Request No. 23-FOI-00108**

Dear Mr. Eller:

I represent Melanie Faizer in connection with the above-referenced request submitted under the federal Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), to the Tennessee Valley Authority ("TVA"). This letter constitutes an administrative appeal on behalf of Ms. Faizer.

## I. Factual and Procedural History

On April 12, 2023, Ms. Faizer submitted a FOIA request (hereinafter, the "Request") to TVA via TVA's FOIA submission portal. The Request sought access to all "agreements, grants or contracts entered into between Bitdeer and TVA," as well as related email correspondence and information on Bitdeer's power use. TVA assigned the Request tracking number 23-FOI-00108.

By letter dated May 11, 2023, TVA issued a final determination, releasing one six-page incentive agreement between Bitdeer and TVA and claiming redactions under FOIA Exemptions 4 and 5. A true and correct copy of that letter is attached as Exhibit A.

By letter dated May 25, 2023, Ms. Faizer appealed TVA's determination. A true and correct copy of that letter is attached as Exhibit B. Ms. Faizer appealed TVA's decision to deny her request for agreements, grants, or contracts between Bitdeer and TVA and related email correspondence. Ex. B. She again requested (1) all available documents and communications regarding TVA's Economic Development Initiative, (2) all correspondence and communications between Carpenter Creek LLC (Bitdeer) and TVA related to Carpenter Creek's participation in TVA's Economic Development Initiative, and (3) all available documents and communications demonstrating how TVA verified Bitdeer's claim that it would repurpose underutilized industrial infrastructure to create jobs. *Id.*

On October 20, 2023, TVA issued a second determination in response to Ms. Faizer's Request and subsequent administrative appeal. A true and correct copy of that letter is attached as Exhibit C. TVA released "additional agreements and correspondence between Bitdeer and TVA." Ex. C. The documents, TVA noted, "had been redacted … pursuant to FOIA exemptions 4, 5 and 6"; additionally, "31 items related to the credit agreement [we]re withheld in full pursuant to FOIA exemption 4." *Id.* As relevant to this administrative appeal, TVA stated:

> The information redacted and withheld under exemption 4 is information Bitdeer identified as information that would cause it substantial financial and competitive harm if made public.
> [ … ]
> TVA considers certain details of its economic development programs confidential, proprietary information that is protected by exemption 5. Release of such information would cause TVA competitive harm by allowing other utilities, who are competing for the same customers, insight into the details of TVA's programs and strategies for attracting businesses to the Tennessee Valley. Release of confidential terms and conditions … would impair the effectiveness of TVA's economic development programs by stifling TVA's ability to obtain confidential information from future prospective companies, among other things.
> The information redacted from the records under exemption 6 is personal contact information of non-agency personnel that is protected by the privacy provisions of exemption 6.

*Id.*

At issue in this appeal are six documents that were subject to significant redaction by TVA under Exemptions 4, 5, and 6. True and correct copies of the six records are attached as Exhibits D, E, F, G, H, and I.

This administrative appeal is timely submitted. 5 U.S.C. § 552(a)(6)(A)(III)(aa) (affording requesters no fewer than 90 days to submit administrative appeals).

## II. TVA Violated FOIA by Improperly Redacting Records.

FOIA was enacted to create an enforceable right of "access to official information long shielded unnecessarily from public view." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). As the Supreme Court has explained, the "core purpose" of the Act is to increase "public understanding of the operations or activities of the government." *Dep't of Just. v. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989) (citation omitted). "The burden of proof is on the government to justify

[FOIA] exemption[s]." *Heights Cmty. Cong. v. Veterans Admin.*, 732 F.2d 526, 529 (6th Cir. 1984). Even if an agency properly exempts some information, it must nevertheless disclose "'any reasonably segregable' portion of a record that falls within one of the statute's exceptions." *Rugiero v. U.S. Dep't of Just.*, 257 F.3d 534, 553 (6th Cir. 2001). In addition, an agency must demonstrate that it is "reasonably foresee[able]" that "disclosure would harm an interest protected by" the cited exemption, or that disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A)(i).

Here, TVA has not satisfied its burden with respect to its withholdings under Exemptions 4, 5, or 6.

a. TVA Improperly Redacted Records Pursuant to Exemption 4.

To withhold records or portions thereof under Exemption 4, the government must prove that the information it is withholding is "commercial or financial," was "obtained from a person," and is "privileged or confidential." 5 U.S.C. § 552(b)(4).

i. The information redacted pursuant to Exemption 4 is not "commercial or financial."

"The nature of the information" determines whether the information is "commercial or financial" within the meaning of FOIA. *Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Just.*, 58 F.4th 1255, 1265-67 (D.C. Cir. 2023). However, "not every bit of information submitted to the government by a commercial entity qualifies for protection under Exemption 4." *Pub. Citizen Health Rsch. Grp. v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). "Withheld information must be commercial in and of itself to qualify for withholding under Exemption 4; that disclosure *might* cause commercial repercussions does not suffice to show that information is 'commercial' under Exemption 4." *S. Env't L. Ctr. v. Tenn. Valley Auth.*, 659 F. Supp. 3d 902 (E.D. Tenn. 2023) (quoting *Citizens for Resp. & Ethics in Washington*, 58 F.4th at 1268) (emphasis added).

Certain information that TVA redacted pursuant to Exemption 4 is neither commercial nor financial in nature. The names, emails, and other Bitdeer employee contact information (Exhibits D–I), the publicly known address of Bitdeer's facility in Knoxville (redacted only in Exhibit E), the contracts' name and number identifiers (though not redacted in Exhibits D or E, this information is redacted in Exhibits F–I), among other information are not in and of themselves commercial simply because they "might be used for insight into the nature of" Bitdeer's business dealings. *Nat'l Bus. Aviation Ass'n, Inc. v. F.A.A.*, 686 F. Supp. 2d 80, 87 (D.D.C. 2010). It is, moreover, unclear how the foregoing items are in and of themselves financial or commercial, given that TVA inconsistently redacted seemingly identical categories of information across the six documents. *See S. Env't L. Ctr.*, 659 F. Supp. at 902; Exs. D–I. In other words, the agency itself appears unable to clearly discern which information is "commercial or financial" and may be withheld pursuant to Exemption 4. Thus, to the extent that TVA asserted Exemption 4 to protect information that was not inherently commercial or financial, TVA improperly withheld that information.

ii. The information redacted pursuant to Exemption 4 was not "obtained" by TVA.

TVA improperly redacted information in the six challenged documents pursuant to Exemption 4 because the information cannot have been "obtained" by TVA from Bitdeer. While a corporation is a person within the meaning of FOIA, 5 U.S.C. § 551(2), information generated by the corporation must be said to have been *obtained* from the corporation, rather than generated by or within the government itself, in order to satisfy one of the threshold requirements of Exemption 4. *Elec. Priv. Info. Ctr. v. Dep't of Homeland Sec.*, 928 F. Supp. 2d 139, 147 (D.D.C. 2013). When information redacted under Exemption 4 appears in government documents—as here, in TVA's agreements and contracts with Bitdeer—it may not be considered to have been "obtained" from outside the government if the government has "substantially reformulated" the information it received from the outside source. *Occupational Safety & Health L. Project, PLLC v. U.S. Dep't of Lab.*, No. 1:21-CV-2028-RCL, 2022 WL 3444935, at *5 (D.D.C. Aug. 17, 2022). Thus, "when the redacted information—despite relying upon other information obtained from outside the agency—constitutes that agency's own analysis, such information is the agency's information and is unprotected" by Exemption 4. *Id.* (quoting *S. All. for Clean Energy v. U.S. Dep't of Energy*, 853 F. Supp. 2d 60, 68 (D.D.C. 2012)); *see also S. Env't L. Ctr.*, 659 F. Supp. at 902 ("Redacted information that constitutes an agency's own analysis does not fall within Exemption 4's coverage, even when the agency used information obtained from a person outside the agency to guide its analysis.").

Here, TVA cited Exemption 4 to withhold information that was generated through a process of contract negotiation, reformulation, and analysis within the federal government, or generated within the federal government in its entirety. For instance, in the document "Executed Grant Agreement" the total award amount for TVA's Performance Grant to Bitdeer was redacted, yet there is no evidence that this figure was simply given to TVA by Bitdeer for TVA to later reprint it verbatim in the agreement. Ex. D at 1. The items redacted from "2020 IC Agreement" include all cells in a table labeled "Minimum Cumulative Investment Thresholds," which appear to indicate how much money the agreement between TVA and Bitdeer would be expected to generate, as well as Bitdeer's eligibility to achieve those investment amounts. Ex. E at 9. In the same document, as well as in a document named "Executed IC Agreement," TVA redacted all cells in a table labeled "Annual Performance Projections," which seems to reflect Bitdeer's projected performance by both energy and economic measures. Ex. E at 1; Ex. F at 1. TVA also redacted from the "Executed IC Agreement" document all information contained in a table titled "Investment Credit Payment," which sets forth the "maximum annual awards" that Bitdeer would be given over a five-year contract with TVA. Ex. F at 2.

Exemption 4 is inapplicable to every instance described above because payments, credits, or other financial deals entered into by both parties are not simply information that TVA obtained from Bitdeer—they are quantities of money or credit that arose from

continued negotiation and substantial reformulation between the agency and Bitdeer. *See Occupational Safety & Health L. Project, PLLC*, No. 1:21-CV-2028-RCL, 2022 WL 3444935, at *5 (citation omitted) (finding no Exemption 4 applicability where the agency has "substantially reformulated" information from another entity "such that it is no longer a 'person's' information but the agency's information."). That these items were not merely provided to the agency without further discussion is common sense, but it is also evident across each of the six documents at issue in this appeal: taken chronologically, the contracts and amendments appear to update the terms and financial outputs of the deal between TVA and Bitdeer over a period of several years. Exs. D–I. This fact alone shows that Exemption 4 is inapplicable.

In the contracts pertaining to power interruptions (Exhibits G, H, and I), TVA redacted information reflecting how much energy Bitdeer could demand even during service interruptions, among other tabulations. Exs. G–I. It strains credulity to suggest that TVA did not bear significant authority over the calculations and demand outcomes, "substantially reformulating" or even wholly rendering the numbers reflected in the agreements; for one, TVA is the only party who knows the capacity of its vast cohort of energy facilities and what modicum of demand protection is feasible, within a certain range, to provide Bitdeer. *See Occupational Safety & Health L. Project, PLLC*, No. 1:21-CV-2028-RCL, 2022 WL 3444935, at *5 (citation omitted) ("the key distinction" separating information subject to Exemption 4 and not "is between information that is either repeated verbatim or slightly modified by the agency, and information that is substantially reformulated by the agency … ."). In a table in a document called "IP Contract S02," it appears that Bitdeer was prompted to choose from a list of "economic interruption hours" and "demand credit amount premiums" *provided by TVA*. Ex. I at 2. Though the figures were ostensibly provided by TVA to Bitdeer for the corporation to select from, these cells are entirely redacted pursuant to Exemption 4, in contravention of the threshold requirement that such information be provided to an agency from an outside source. *See Elec. Priv. Info. Ctr.*, 928 F. Supp. 2d at 147 ("Information may be 'obtained from a person' [for the purposes of Exemption 4] if provided by individuals, corporations, or numerous other entities, but not if it was generated by the federal government."). Elsewhere in the same contract, TVA redacted "the product of ECA and Heat Rate," which rendered the quantity of Bitdeer's "Energy Credit." Ex. I at 2. Though the figure itself is redacted, the context of the sentence suggests that TVA—not Bitdeer—calculated the number that is hidden by Exemption 4, in violation of FOIA. *See id.* (" … for the purposes of applying the energy credit calculation under section 2.3 of the IP Contract, the product of ECA and Heat Rate will be deemed to be [redacted]").

Across all the contested records, Exemption 4 is used to conceal information that was not obtained outside of TVA—information that ought to be released to Ms. Faizer under FOIA.

iii. The information redacted pursuant to Exemption 4 is not "confidential."

TVA's attempt to redact information using Exemption 4 fails, too, where the agency has not shown that the information is "confidential." Exemption 4 only applies when the information subject to redaction is "both customarily and actually treated as private by its owner." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

In the case of Bitdeer's publicly known contact, employee, and location information, such items are not "confidential" because members of the public and press are well aware of the locations of Bitdeer's Knoxville mine and some of the employees responsible for Bitdeer's operations. *See, e.g.*, Vincent Gabrielle, *Hidden in East Tennessee, Crypto Capitalists Lead Modern Day Rush for Electricity to Power Their Virtual Mining Operations*, Knox News (June 1, 2022), https://perma.cc/X2R2-BN3E; *see also* Bitdeer Technologies Group, Securities and Exchange Commission Prospectus (Oct. 16, 2023), https://perma.cc/ZE7D-224P (Bitdeer's SEC prospectus, a public document, states that it owns "a tract of land of approximately 9.88 acres … located at 5101 S. National Drive, Knoxville, Tennessee, 37914," and that its Knoxville mine "had 86MW electrical capacity in use as of September 30, 2023"). TVA must show that the information redacted pursuant to Exemption 4 is confidential—that is, that Bitdeer does not share the same information freely in settings other than their business dealings with TVA. *Argus Leader Media*, 139 S. Ct. at 2363 (finding that the information owner must treat the information as private in order for Exemption 4 to apply, since " … it is hard to see how information could be deemed confidential if its owner shares it freely"). TVA has not made any such showing, saying only that "exemption 4 protects confidential commercial and financial information." Ex. C. Absent any substantive justification, TVA cannot redact the foregoing information pursuant to Exemption 4.

iv. TVA did not meet its burden to show the foreseeable harm of disclosing information it redacted pursuant to Exemption 4.

Finally, TVA has not shown that releasing the information redacted pursuant to Exemption 4 would cause "foreseeable harm." Even if an agency establishes that the information it seeks to withhold is "commercial or financial," was "obtained from a person," and is "privileged or confidential," 5 U.S.C. § 552(b)(4), there remains "an independent statutory requirement that an agency must meet to withhold information"—namely the agency must "establish foreseeable harm." *Seife v. Food & Drug Admin.*, 43 F.4th 231, 240–41 (2d Cir. 2022); *see also S. Env't L. Ctr.*, 659 F. Supp. 3d at 917 (citation and quotation marks omitted) (analyzing an Exemption 4 withholding, stating that the "[a]pplicability of a FOIA exemption is still necessary—but no longer sufficient—for an agency to withhold the requested information … [there is] an additional, independent burden on the agency.").

Though TVA stated cursorily that "[t]he information redacted and withheld under exemption 4 is information Bitdeer identified as information that would cause it substantial financial and competitive harm if made public," TVA failed to substantiate

that assertion. Ex. C. This does not satisfy TVA's "independent and meaningful burden" under the foreseeable harm standard. *Reps. Comm. for Freedom of the Press v. Fed. Bureau of Investigation*, 3 F.4th 350, 369 (D.C. Cir. 2021); *see also Seife*, 43 F.4th at 240 (to justify withholding pursuant to Exemption 4, the government must also meet the additional burden of showing foreseeable harm); *S. Env't L. Ctr.*, 659 F. Supp. 3d at 917 (same).

In sum, TVA has failed to justify its withholdings under Exemption 4 and must release all improperly withheld information to Ms. Faizer.

b. TVA Improperly Redacted Records Pursuant to Exemption 5.

"To qualify under Exemption 5's express terms, a [redaction] must satisfy two conditions: its source must be a Government agency, and it must fall within the ambit of a privilege against discovery under judicial standards that would govern litigation against the agency that holds the document." *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 2 (2001). As the Supreme Court has noted, "the first condition of Exemption 5 is no less important than the second"—an agency must show that the redacted information comes from within an "inter-agency or intra-agency" memorandum or letter. *Id.*; 5 U.S.C. § 522(b)(5). "Intra-agency" records "remain inside a single agency," whereas "inter-agency" records "go from one governmental agency to another." *Tigue v. U.S. Dep't of Just.*, 312 F.3d 70, 77 (2d Cir. 2002). In either instance, the Sixth Circuit has held that "the document's 'source must be a Government agency'" and "the destination of the document must be a Government agency as well." *Lucaj v. Fed. Bureau of Investigation*, 852 F.3d 541, 546 (6th Cir. 2017) (citation omitted).

i. The information redacted pursuant to Exemption 5 is not contained in "inter-agency or intra-agency" records.

Here, TVA fails to satisfy the threshold requirement of Exemption 5, as the six records at issue in this appeal are not "inter-agency or intra-agency" memoranda or letters. 5 U.S.C. § 522(b)(5). Bitdeer is not an agency within the meaning of FOIA—it is an independent corporation that happens to contract with TVA. *See* Nasdaq, Bitdeer Technologies Group Class A Ordinary Shares (BTDR) Listing, https://www.nasdaq.com/market-activity/stocks/btdr (last visited Jan. 2, 2024). TVA's second determination letter failed to justify its Exemption 5 withholdings as originating in "inter-agency or intra-agency" contracts, *see* Ex C, and it is clear that TVA could not even attempt such a justification since the records at issue were exchanged between TVA and Bitdeer, a plainly non-agency entity. *See Lucaj*, 852 F.3d at 546 (to fall under Exemption 5, documents must, as a threshold matter, be sourced and sent between government agencies). At the threshold inquiry, TVA's Exemption 5 redactions fail, and TVA must release all non-exempt portions of the six documents at issue in this appeal.

ii. The information redacted pursuant to Exemption 5 originates in contracts that have already been awarded.

Even if TVA had met the first condition required to claim Exemption 5 (and it has not), it still has not met the second condition. In its second determination letter, TVA asserted the qualified "confidential commercial information" privilege as incorporated into FOIA by the Supreme Court in *Federal Open Market Committee of the Federal Reserve System v. Merrill*, 443 U.S. 340 (1979). Ex. C. TVA therefore must show that the information it redacted is "confidential commercial information" that was "generated by the Government itself in the process leading up to awarding a contract." *Id.* at 360. This basis for claiming Exemption 5, like the common law privilege from which it derives, is qualified and "expires as soon as the contract is awarded or the offer withdrawn." *Id.*; *see also Petroleum Info. Corp. v. U.S. Dep't of Interior*, 976 F.2d 1429, 1439 (D.C. Cir. 1992) (urging that the use of Exemption 5 for confidential commercial information "must be read … with the statute's dominant disclosure direction always in view.").

With respect to the confidential commercial information privilege, Exemption 5 does not protect from disclosure documents that constitute or contain information pertaining to a contract that has already been awarded. *See Payne Enters., Inc. v. United States*, 837 F.2d 486, 489 (D.C. Cir. 1988) (rejecting the Air Force's attempt to use the confidential commercial information privilege through Exemption 5 to withhold bid information once a contract had already been made); *see also MCI Telecomms. Corp. v. Gen. Servs. Admin.*, No. CIV. A. 89-0746(HHG), 1992 WL 71394, at *4 (D.D.C. Mar. 25, 1992) (finding that even if confidential commercial information privilege incorporated into Exemption 5 applied, it did "not protect such information after [the] contract ha[d] been awarded."). Even where courts have found that confidential commercial information may be withheld pursuant to Exemption 5 because its release could put the government at a competitive disadvantage, the government has nonetheless been compelled to release the information once the contracts were finalized. *Hack v. Dep't of Energy*, 538 F. Supp. 1098, 1104 (D.D.C. 1982); *see also Morrison-Knudsen Co. v. Dep't of the Army of U.S.*, 595 F. Supp. 352, 354 (D.D.C. 1984), *aff'd sub nom. Morrison-Knudsen Co. v. Dep't of Army*, 762 F.2d 138 (D.C. Cir. 1985) (quoting *Merrill*, 443 U.S. at 363) ("If the government documents sought in the FOIA request 'contain sensitive information not otherwise available, and if immediate release of these [documents] would significantly harm the Government's monetary functions or commercial interests, than [*sic*] a slight delay in [release] … would be permitted under Exemption 5.'").

Given the narrow scope of the confidential commercial information privilege in the FOIA context, TVA's Exemption 5 redactions are in error. *See Schell v. U.S. Dep't of Health & Hum. Servs.*, 843 F.2d 933, 939 n.4 (6th Cir. 1988) (citation omitted) ("exemption 5 is to be construed as narrowly as consistent with efficient Government operation."). The six contracts at issue in this appeal were finalized and/or signed in August 2019, April 2020, July 2021, and April 2023. Exs. D–I. TVA noted in its second determination letter that it considers the information redacted pursuant to Exemption 5

confidential and commercially privileged, Ex. C, but failed to acknowledge that the privilege, as incorporated into Exemption 5, only applies when a contract is still being negotiated—not when the contract has already been awarded. *See Merrill*, 443 U.S. at 361 (confidential commercial information protected by Exemption 5 is that which was "generated in the *process* of awarding a contract") (emphasis added). Moreover, the privilege does not contemplate the impact of FOIA disclosure on agencies' future business prospects as a basis for withholding under Exemption 5, though TVA asserts as much in its decision on Ms. Faizer's administrative appeal. *See* Ex. C ("Release of confidential terms and conditions related to TVA incentives would impair the effectiveness of TVA's economic development programs by stifling TVA's ability to obtain confidential information from *future* prospective companies … .") (emphasis added). For the simple reason that the privilege shielding confidential commercial information from disclosure does not apply to information contained in already executed contracts or agreements, TVA's redactions pursuant to Exemption 5 are improper.

iii. TVA did not meet its burden to show the foreseeable harm of disclosing information it redacted pursuant to Exemption 5.

Though TVA vaguely referenced the competitive harm it could face as a result of releasing information responsive to the Request, the agency's claims are insufficient to meet its "independent and meaningful burden" to show foreseeable harm. *Reps. Comm. for Freedom of the Press*, 3 F.4th at 369. TVA may not "rely on mere speculative or abstract fears … to withhold information," nor "generalized assertions," *id.*, but instead must identify "specific, identifiable harm that would be caused by a disclosure." *Jud. Watch, Inc. v. U.S. Dep't of Com.*, 375 F. Supp. 3d 93, 100 (D.D.C. 2019). Here, TVA simply stated, without more, that it "considers certain details of its economic development programs confidential, proprietary information," the release of which "would cause TVA competitive harm by allowing other utilities, who are competing for the same customers, insight into the details of TVA's programs and strategies for attracting businesses to the Tennessee Valley." Ex. C. TVA also stated, without evidence, that "[r]elease of confidential terms and conditions related to TVA incentives would impair the effectiveness of TVA's economic development programs by stifling TVA's ability to obtain confidential information from future prospective companies, among other things." *Id.* Since TVA has not met its burden to move beyond generalized assertions and speculative fears, *Jud. Watch, Inc.*, 375 F. Supp. at 100, it has likewise failed to demonstrate a reasonably foreseeable risk that "disclosure would harm an interest" protected by Exemption 5, in violation of FOIA. 5 U.S.C. § 552(a)(8)(A)(i).

c. TVA Improperly Redacted Records Pursuant to Exemption 6.

To withhold records or portions thereof under Exemption 6, the government has the burden of demonstrating that disclosing "personnel and medical files and similar files … would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). To invoke Exemption 6, the government must first articulate whether there are any substantial privacy interests at stake. *See Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015) (citations and internal quotation marks omitted) ("To apply exemption 6, a court must first determine whether disclosure would compromise a

substantial, as opposed to a de minimis, privacy interest."). Such privacy interests, if any, must be balanced against the "public interest in disclosure." *Schell*, 843 F.2d at 938. "Importantly, this Exemption leans heavily in favor of disclosure, as the presumption to disclose is 'at its zenith under Exemption 6.'" *WP Co. LLC v. U.S. Dep't of Def.*, 626 F. Supp. 3d 69, 78 (D.D.C. 2022) (quoting *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 37 (D.C. Cir. 2002)).

Here, TVA has failed to articulate any privacy interest—much less a significant privacy interest—in the redacted information; thus, its invocation of Exemption 6 fails at the threshold inquiry. *See Nat'l Ass'n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 874 (D.C. Cir. 1989) ("If no significant privacy interest is implicated," then Exemption 6 does not apply, and "FOIA demands disclosure."). For instance, TVA applied a blanket redaction as to Bitdeer employees' names, in direct contravention of precedent that Exemption 6 "does not categorically exempt individuals' identities . . . because the 'privacy interest at stake may vary depending on the context in which it is asserted.'" *Jud. Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 153 (D.C. Cir. 2006) (quoting *Armstrong v. Exec. Off. of the President*, 97 F.3d 575, 582 (D.C. Cir. 1996)). Despite the fact that "the burden of proof is on the government to justify" its use of Exemption 6, TVA simply failed to do so. *Heights Cmty. Cong.*, 732 F.2d at 529.

In addition to failing to demonstrate any discernible privacy interest in the redacted information, TVA also failed to consider the public's interest in disclosure, as required by FOIA. *See Schell*, 843 F.2d at 938 (citing S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965)) (finding that determining whether an unwarranted invasion of privacy has occurred "requires a balancing of interests 'between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information.'"). The Eastern District of Tennessee recently found that TVA "is not insulated from public interest or oversight into its spending." *Perrusquia v. Tennessee Valley Auth.*, No. 3:22-CV-309, 2023 WL 6303013, at *6 (E.D. Tenn. Sept. 27, 2023). Indeed, "the public," as this Request shows, has "an interest in information related to the reliability and affordability of their public utilities" and in "the inner workings of public utility providers like [TVA]." *Id.* The information Ms. Faizer seeks is of the same type as that at issue in *Perrusquia*: it bears directly on TVA's inner workings, namely TVA's bitcoin mining and economic incentives programs, and the programs' impact on energy use and pricing statewide. *See id.* Though Ms. Faizer need not evince any "special interest" in the information sought by the Request, *id.* at *7 (quoting *U.S. Dep't of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487, 496 (1994)), TVA has not considered, as it must, the vast public value of releasing the information Ms. Faizer seeks. Absent a significant privacy interest and considering the comparatively significant public interest in TVA's "inner workings," TVA cannot justify its withholdings under Exemption 6. *See id.*

Finally, TVA entirely failed to satisfy the foreseeable harm standard with respect to its Exemption 6 withholdings. Though TVA has an "independent and meaningful burden" to demonstrate "the basis and likelihood of [foreseeable] harm" as to the information redacted pursuant to Exemption 6, *Reps. Comm. for Freedom of the Press*, 3 F.4th at 369, it offered no such justification anywhere in its second determination in

response to the Request and subsequent administrative appeal. *See* Ex. C. TVA may not dispense with its statutory obligation to identify and explain the foreseeable harm that disclosing information redacted under Exemption 6 would incur.

In summary, TVA failed to satisfy its burden to withhold information pursuant to Exemption 6.

## III. Conclusion

Ms. Faizer respectfully requests that TVA provide her with unredacted versions of the records in Exhibits D–I.

If you have any questions regarding this appeal, please feel free to contact me at your convenience.

Sincerely,

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Enclosures