



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219  
Tel: (804) 225-2131  
(TTY) 711

**COMPLIANCE RULING**

In the matter of the Virginia Department of Health  
Ruling Number 2024-5645  
December 19, 2023

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management (“DHRM”) in relation to the alleged noncompliance by the Virginia Department of Health (the “agency”).

FACTS

On or about October 23, 2023, the grievant initiated a grievance challenging her salary, including the failure to process a pay action that has allegedly been approved by her leadership, but not supported by agency human resources, at least in part. Pursuant to her grievance, the grievant submitted a request for documents on October 31, 2023, and a modified request on November 9, 2023. The agency produced two of the three documents requested on November 17, 2023. The third category of documents sought was “[a]ggregated agency pay transaction data ... showing in-band adjustments for internal alignment and ... retention with old and new salary, working title and role title, approved by [agency human resources] with effective dates between 3/10/23 and 11/10/23.” In its November 17 response, the agency provided the grievant with a cost estimate (\$379.23) to gather and produce the requested pay transaction data. In requesting this compliance ruling, the grievant asserts that the agency has failed to comply with the grievance procedure because the agency response was allegedly due by November 16, one day earlier than it was provided. The grievant also contests the agency’s cost estimate and seeks EDR to review the fee.

DISCUSSION

The grievance statutes provide that “[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party.”<sup>1</sup> EDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. Just cause is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”<sup>2</sup> For purposes of document

<sup>1</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

<sup>2</sup> *Grievance Procedure Manual* § 9.

production, examples of just cause include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.<sup>3</sup> In determining whether just cause exists for nondisclosure of a relevant document under the grievance procedure, and in the absence of a well-established and applicable legal privilege,<sup>4</sup> EDR will weigh the interests expressed by the party for nondisclosure of a relevant document against the requesting party's particular interests in obtaining the document.<sup>5</sup> The grievance statutes further provide that "[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance."<sup>6</sup>

EDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five-workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or "just cause," the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.<sup>7</sup>

#### *Timing of response*

The agency's response to the grievant's request for documentation is dated November 17, which was allegedly one day late according to the grievant's calculation. The grievant asserts that because the agency handled the request pursuant to the Virginia Freedom of Information Act (FOIA) and not the grievance procedure, the agency proceeded in accordance with the deadlines under FOIA rather than the grievance procedure. To the extent it can be argued that the agency's response was late under the grievance procedure, the agency has corrected that noncompliance by issuing its response. Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. We therefore find that the grievant's claim of noncompliance is moot because it has been corrected by the agency and we will take no further action on this issue.

---

<sup>3</sup> See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>4</sup> Certain well-established and applicable legal privileges recognized by courts in litigation will constitute just cause for nondisclosure under the grievance procedure without the need to balance competing interests. See, e.g., EDR Ruling No. 2002-215 (discussing attorney-client privilege).

<sup>5</sup> See, e.g., EDR Ruling No. 2010-2372.

<sup>6</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>7</sup> *Grievance Procedure Manual* § 8.2.

*Reimbursement for the Cost of Production*

As to the grievant's request for aggregated agency pay transaction data, the agency has indicated that such records will be produced, but the agency seeks reimbursement for the cost of production. Under the grievance procedure, a party who requests "documents may be charged a reasonable amount not to exceed the actual cost to retrieve and duplicate the documents."<sup>8</sup> EDR has previously ruled that it is acceptable for an agency to request payment from a grievant for the cost of redacting requested documents, so long as that amount is reasonable pursuant to the cited *Manual* provision.<sup>9</sup> EDR does however have the authority to determine whether those costs may be collected in whole or in part for just cause.<sup>10</sup>

In making such a determination, EDR applies a balancing test, weighing the reasons why charging a certain amount would be appropriate with the relative importance of the documents requested to the actions grieved.<sup>11</sup> The more important the document, the less appropriate it would be to charge for obtaining it. EDR must balance the interests of creating non-reimbursable burdens on a party against the requirements of the grievance process. Where the documents sought entertain a potential fishing expedition, or one that requires extensive time and effort to collect, such as reviewing the files of a large number of employees, it would be equally reasonable to expect that an agency could recover the reasonable costs associated with that search.

The grievant is seeking the pay transaction data because of her assertion that the agency is inconsistently applying policy in assessing pay transactions. Thus, the grievant has identified that she is seeking information to discover (1) whether other pay transactions were processed for employees in Northern Virginia with salaries higher than comparable employees in other regions, (2) whether preference is given to certain classifications of positions,<sup>12</sup> and (3) whether any pay transactions for her position classification were processed or put on hold during the same time that hers was submitted. While the compensation data sought may be public information and, therefore, subject to disclosure pursuant to FOIA, EDR observes that the grievant's information request is broader than what EDR would determine is of material relevance to the grievant's claims. An example of this is seeking information about pay actions for all agency employees, whether or not those employees are appropriate comparators or in comparable situations. However, we would acknowledge that information specifically related to transactions for employees in the grievant's same classification, especially as to the alleged hold placed by the agency, would seem to be important and relevant – though this question would seem to be one easily answerable by the agency without a production of documents.

Consequently, in consideration of the breadth of the grievant's request, EDR does not find just cause that the agency's fee estimate should be reduced or eliminated. On the surface, the

---

<sup>8</sup> *Id.*

<sup>9</sup> *E.g.*, EDR Ruling No. 2016-4222; EDR Ruling No. 2014-3663.

<sup>10</sup> *See* EDR Ruling No. 2015-4046.

<sup>11</sup> *See id.*

<sup>12</sup> The grievant states that she was told the pay action for her position is not comparable with those for doctors. In response, the grievant asserts that transactions should not favor one classification over another. While the grievant is free to make this point, EDR would observe that pay transactions are to take into account the relevant pay factors applicable to the given situation. *See* DHRM Policy 3.05, *Compensation*. Accordingly, there will be differences between position classifications as to how particular pay factors weigh in each compensation decision. Being that doctors are traditionally difficult to hire and retain, it is not unreasonable that there could be differences in how pay actions are handled for doctors versus other positions.

agency's cost estimate appears to be consistent with its approach of charging members of the public for information requests under FOIA. The agency has estimated that it will take at least eight hours to complete the work required to gather the information sought. The grievant has not presented and EDR does not have any information to suggest that this cost estimate is inaccurate or inappropriate as a matter of the grievance procedure.<sup>13</sup> Accordingly, EDR has no basis to find the agency in noncompliance with the grievance procedure.<sup>14</sup>

EDR's rulings on matters of compliance are final and nonappealable.<sup>15</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

---

<sup>13</sup> To the extent the cost estimate is a matter of a public record request under FOIA, EDR has no authority to enforce or consider questions of compliance with FOIA.

<sup>14</sup> The grievant may wish to consider narrowing her request for information that is potentially more relevant and material to her claims in this grievance and/or the specific questions she is seeking to answer. For example, limiting the request for pay action information as to agency employees that are in her division, in a similar job, in the same region, or other factors of comparability may be a way to focus the agency's search to reduce time and costs while also producing potentially more relevant information.

<sup>15</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).