

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: May 28, 2013;
Ruling No. 2013-3604; Agency: Department of Motor Vehicles; Outcome: Agency in
Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2013-3604
May 28, 2013

The grievant has requested a ruling regarding the Department of Motor Vehicles' (the agency's) alleged noncompliance with the grievance procedure in failing to produce requested documents.

FACTS

The grievant's document request concerns two grievances filed on March 21, 2013 and March 29, 2013, respectively. Both grievances appear to challenge similar management action(s), specifically related to the grievant's suspension with pay prior to the issuance of disciplinary action and events leading thereto. In an April 5, 2013 e-mail, while corresponding with the agency's counsel regarding a document request submitted to the grievant, the grievant's counsel requested, similarly, "all relevant documents." The agency has since responded that it has no documents responsive to the grievant's request.

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."¹ 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."² For purposes of document 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.³ The statute further states 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."⁴

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

² *Grievance Procedure Manual* § 9.

³ See, e.g., EDR Ruling No. 2008-1935, 2008-1936; EDR Ruling No. 2001QQ.

⁴ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

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.⁵

At issue in this ruling is the grievant's request for "all relevant documents" in relation to her two active grievances. Unfortunately, such a request is far too indefinite and broad for EDR to determine whether or to what extent the agency has complied with the grievance procedure in producing relevant documentation. Therefore, we cannot fault the agency for not providing responsive documents. EDR, too, would have difficulty assessing what documents are or could be relevant to such a request.

However, the grievant sent a follow-up letter on April 23, 2013, requesting that the agency confirm that it does not have any documents related to certain specific topics. In so doing, the grievant has effectively clarified her document request. Fairly read, the letter is therefore requesting, at a minimum, that the agency provide (or confirm that no such documents exist) documents related to:

- 1) the grievant's report of workplace violence;
- 2) communications between personnel regarding the workplace violence or any attempt to respond to such workplace violence;
- 3) reports of the grievant seeking criminal charges as a result of the agency failing to respond to the workplace violence;
- 4) a policy forcing employees to undergo interrogations;
- 5) the grievant's suspension based on the third interrogation;
- 6) re-suspension, termination, or permission to return to work following the initial 15 day period of suspension; and
- 7) the agency providing any information or documentation to a specifically-identified individual or her attorney, whether in response to a subpoena or otherwise.

These requests are much more definite and specific than a broad request for all relevant documents. If the agency has provided a response to these items, EDR is not aware of it. While it does not appear that the grievant has provided a notice of noncompliance to the agency for failure to respond to the April 23rd letter, the agency is nevertheless now under a duty to respond

⁵ *Id.*

to this updated request from the grievant pursuant to Section 8.2 of the *Grievance Procedure Manual*.⁶

CONCLUSION AND ADDITIONAL MATTERS

For the reasons set forth above, EDR denies the grievant's ruling request as to her original request for "all relevant documents." The agency is directed to respond to the clarified document request in the grievant's April 23, 2013 letter, as discussed above, consistent with Section 8.2 of the *Grievance Procedure Manual*. To the extent the grievant continues to seek other documentation as to these two grievances, a more specific document request should be submitted to the agency (or counsel). EDR's rulings on matters of compliance are final and nonappealable.⁷

In addition, EDR notes that the subject grievances and surrounding issues have been the subject of request(s) for a stay due to a pending court filing. Since EDR's last correspondence on that question, we have received nothing from either party indicating any prejudice that would result from allowing these grievances to proceed. Therefore, EDR will not order a stay at this time. Should either party wish to identify any prejudice that could result from moving forward, please provide that information in writing as soon as possible. Perhaps the lack of follow-up information indicates that the parties are working together to address such issues.

To the point of working together, EDR encourages the parties to consider seeking additional alternative dispute resolution means possibly to resolve all their claims. For example, procuring the services of an experienced and skilled mediator or facilitator⁸ to assist the parties in resolving these cases could result in better outcomes for either party than at a grievance hearing. EDR will allow the necessary time to work out these matters should the parties avail themselves of such alternative resolution methods. It should be noted, however, that, if it is considered an option, now is probably the time to do so. For example, if these or other grievances later proceed to a hearing stage, some hearing officers will not approve a request for a continuance for the purpose of mediation.



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⁶ Whether these documents are relevant to the subject grievances is not addressed in this ruling.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).

⁸ While EDR administers a statewide mediation program, the instant case is not appropriate for the EDR mediation program. If sought, it would appear that the primary purpose for using ADR would be for a negotiated settlement, which is not what EDR's program is intended to address.