

Issue: Compliance – Grievance Procedure (documents); Ruling Date: March 19, 2014; Ruling No. 2014-3841; Agency: Old Dominion University; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of Old Dominion University  
Ruling Number 2014-3841  
March 19, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the alleged failure of Old Dominion University (the “University”) to produce documents pursuant to an order issued by the hearing officer.

FACTS

The procedural and substantive facts of this case are set forth in EDR’s prior compliance ruling on this matter and are incorporated herein by reference.<sup>1</sup> On or about March 4, 2014, the grievant submitted a request to the hearing officer for the production of documents by the University in relation to the issues that are the subject of an upcoming grievance hearing. On March 6, 2014, the hearing officer ordered the University to produce the following documents:

- (i) Each daily work report, regardless of form, submitted to [supervisor] by any of his subordinates, excluding Grievant, from September 12, 2012, to September 12, 2013;
- (ii) Any other communication, regardless of form, to/from [supervisor] regarding daily work reports from September 12, 2012, to September 12, 2013;
- (iii) Each time-clock email sent to [supervisor] to inform him of the arrival/departure to/from work by any of his subordinates, excluding Grievant, from September 12, 2012, to September 12, 2013;
- (iv) metadata, not the content, for the following:
  - (a) each daily work synopsis email sent from [employee] to [supervisor] from September 12, 2012, to September 12, 2013;
  - (b) each time-clock email sent from [employee] to [supervisor] to inform of his arrival/departure to/from work, from September 12, 2012, to September 12, 2013.

The University provided the grievant with documents in response to the hearing officer’s order. On or about March 14, 2014, an additional pre-hearing conference was held with the

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<sup>1</sup> See EDR Ruling No. 2014-3818.

hearing officer and both parties to address the grievant's requests for: (1) additional documents; (2) an order to compel the production of the documents listed in the March 6 order; and (3) an extension of the pre-hearing discovery time limits and the hearing date. The hearing officer issued another order on March 17, 2014, which denied the grievant's requests.

The grievant submitted a request for a compliance ruling from EDR alleging that the University has failed to comply with the hearing officer's March 6 order for the production of documents and requesting sanctions against the University. The grievant alleges that the University has failed to produce documents in accordance with an order issued by the hearing officer. Specifically, he claims that the University has not "provided the records from the server message-tracking logs" as required by the March 6 order.

### DISCUSSION

Based on the information submitted by the grievant, there is no indication that the University has failed to produce documents that are responsive to the hearing officer's order. To the contrary, it is clear that the University has provided the grievant with responsive documents.<sup>2</sup> It seems instead that the grievant takes issue with the format in which the University has produced the documents. The grievant appears to claim that the documents produced by the University are not credible because the server message-tracking logs are the only documents that contain an accurate record of the information he has requested.

Having reviewed the hearing officer's order, we cannot conclude that the University has failed to comply simply because it has not produced documents in the format desired by the grievant. The order issued by the hearing officer, in addition to the request for documents submitted by the grievant, does not require the production of documents in any particular format. Although the grievant claims that "none of the files" produced by the University "contain records from the server message-tracking logs," there is no information to show that the University's alleged failure to produce records from the server message-tracking logs, if this is actually the case, is somehow an act of noncompliance with the grievance procedure. It may be, for example, that production of the documents in a different format is more feasible because of time constraints or for economic reasons, or that the server message-tracking logs must be translated into a different format in order to be readily understandable.

In short, the grievant has presented no information to show that production of the documents in a different format other than the server message-tracking logs amounts to a failure to produce documents in response to the hearing officer's order. Likewise, there is no basis to conclude that the documents produced by the University are somehow unreliable or inaccurate simply because the grievant takes issue with the format in which they were produced. Accordingly, EDR does not find that the University's production of documents is not in compliance with the grievance procedure.

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<sup>2</sup> In her March 17 order, the hearing officer noted that the University "represented that it has provided all documents ordered" at the pre-hearing conference held on March 14.

At the hearing, the grievant may raise the arguments he has previously presented to the hearing officer or to EDR relating to the University's production of documents. In addition, the University has indicated that the "technical specialist" who searched the University's records for the documents will be present at the hearing as a witness. The University has represented that the technical specialist will "testify to the accuracy" of the documents and can "address any questions about the data produced" in response to the March 6 order. The grievant will have the opportunity to cross-examine the technical specialist if he so chooses.<sup>3</sup> The hearing officer may consider the grievant's claims, the testimony of the technical specialist, and any other relevant evidence in assessing the weight and credibility to be afforded to the evidence presented by the parties, and specifically the documents at issue here.

For the reasons set forth above, there is no basis to conclude that the University has failed to produce documents in response to the hearing officer's order, and there is no basis for EDR to further intervene in this case at this time. EDR declines to delay the hearing, order the production of additional documents by the University, or order sanctions against the University.

EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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Director  
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<sup>3</sup> *Rules for Conducting Grievance Hearings* § IV(A) (stating that, at a hearing, both parties "may examine or cross-examine witnesses and present evidence").

<sup>4</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).