

Issue: Compliance – Grievance Procedure (documents); Ruling Date: August 6, 2013; Ruling No. 2014-3662; Agency: Department of Motor Vehicles; Outcome: Agency in Compliance.



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

RECONSIDERED COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2014-3662
August 6, 2013

The grievant has asked the Office of Employment Dispute Resolution (“EDR”) to reconsider its compliance determination in Ruling Number 2014-3650. For the following reasons, EDR will not change its original determinations.

DISCUSSION

The facts underlying this matter are set forth in EDR Ruling Number 2014-3650 and will not be repeated here. In her request for reconsideration, the grievant argues that she should have been given an opportunity to respond to the information provided by the Department of Motor Vehicles (“DMV” or “the agency”) about its production of requested records prior to the issuance of the ruling. In addition, she asserts that EDR’s determinations regarding the appropriateness of the fees charged by DMV are in error, and that DMV inappropriately used an individual familiar with the grievant’s case in determining which documents would be produced in response to the grievant’s document request. The grievant has also requested copies of EDR’s communications with DMV about her case. Those documents have been provided, and the grievant was given an opportunity to respond.¹

EDR has reviewed and considered the grievant’s submissions on this matter. We first note that to the extent the grievant alleges she was harmed by not being given an opportunity to respond to the information provided to EDR by DMV, any such harm has been cured by her subsequent opportunity to review that information and provide a response for consideration by EDR.

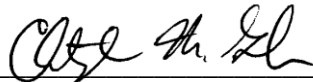
With regard to the grievant’s contention that DMV should not be allowed to charge for an “extensive review” of the documents prior to production, we disagree. Given the circumstances of this case as described in the prior ruling, a thorough review of potentially responsive

¹ While the grievant provided a response to EDR Ruling No. 2014-3650 and requested reconsideration thereof, the grievant stated she had nothing further to provide upon receiving the requested documents of EDR’s “communications” with DMV.

documents is necessarily a part of the collection and production process.² The costs associated with the time devoted to this review is appropriately a part of the “reasonable amount”³ that may be charged to the grievant in this case. Further, for the reasons set forth in our previous ruling, we consider the agency’s selection of the high-level human resources manager to perform this duty to be appropriate.

We also reject as specious the grievant’s argument that having this manager perform this review was in some way a conflict of interest. EDR sees nothing inconsistent with the grievance procedure in having an employee familiar with the issues of a case determine whether documents are responsive to a document request. We do not agree with the grievant’s unsubstantiated assumption that previous involvement will result in bad faith and “wrongful acts.” In addition, we note that assigning this task to an individual unfamiliar with the case would likely have resulted in more time having been spent in the review process and higher costs to the grievant.

Based on the foregoing, EDR will not reconsider our decision on the grounds presented by the grievant. To the extent any of the grievant’s remaining arguments have not been specifically addressed in this reconsidered ruling, EDR also finds no basis to change its previous ruling. EDR’s compliance rulings are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

² As stated in EDR Ruling No. 2014-3650, the agency may charge the grievant for actual time spent on the “document collection and production effort.” *See also* EDR Ruling Nos. 2010-2628, 2010-2629. Further, EDR has and does consider a review such as this part of “reasonable” costs that can be charged. *Id.* at n.9.

³ *Grievance Procedure Manual* § 8.2.

⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).