

Issue: Compliance – Grievance Procedure (5-day rule and documents); Ruling Date: August 8, 2013; Ruling No. 2013-3676; Agency: Department of Corrections; Outcome: Agency Not in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Department of Corrections  
EDR Ruling Number 2014-3676  
August 8, 2013

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management regarding the alleged failure of the Department of Corrections (the “agency”) to comply with the time limits set forth in the grievance procedure for (1) scheduling the second step meeting and (2) responding to document requests submitted by the grievant.

On or about June 11, 2013, the grievant initiated a grievance with the agency. After receiving the first step response, the grievant advanced her grievance to the second step on July 1, 2013. At some point before July 15, 2013, the grievant also apparently submitted a request for documents relating to her grievance.<sup>1</sup> Having not received a response from the agency regarding either the second step meeting or the requested documents, it appears the grievant submitted a notice of noncompliance to her human resources office on July 15, 2013 and, on August 5, 2013, requested a compliance ruling from EDR.

While this ruling was pending, the agency provided additional information about the status of the grievance. Initially, it mistakenly forwarded the grievance to an apparently incorrect second step-respondent. The agency attempted to correct this error by sending the grievance to the correct second step-respondent via institutional mail, but the grievance was apparently not delivered to him. As of August 6, 2013, the second step-respondent has been provided with a copy of the grievance record.

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>2</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without the EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>3</sup> In this case, it appears that the grievant’s request for a compliance ruling is premature because she has

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<sup>1</sup> Although EDR has not seen a copy of the original document request, the agency has not disputed that such a request was submitted.


<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *See id.*

not shown that she first notified the agency head in writing of the alleged violation.<sup>4</sup> The information given to EDR shows that, although it was addressed to to the agency head, the notice of noncompliance was apparently submitted to the grievant's human resources office.

Based on a review of the information submitted by the parties, however, it is evident that more than five workdays have elapsed since the grievant advanced her grievance and requested documents, and the agency has not responded.<sup>5</sup> In the interest of expeditiously resolving the issues raised in this grievance, the agency is ordered to schedule the second step meeting and respond to the grievant's document requests<sup>6</sup> in a manner consistent with the grievance procedure **within five workdays of the date of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.<sup>7</sup>



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<sup>4</sup> *Id.*

<sup>5</sup> *See id.* at §§ 3.2, 8.2.

<sup>6</sup> Subsequent to EDR's receipt of the grievant's ruling request, the agency has asserted that the documents sought from human resources by the grievant are in the possession of the agency's Special Investigations Unit and should be requested directly from that group. However, the grievance procedure does not require a grievant to request documents from the specific section of an agency in whose possession or control the documents may reside. Rather, EDR interprets the grievance procedure to require the agency, upon receiving a request for documents, to take appropriate steps to gather and produce the documents subject to disclosure or ensure that the request reaches the appropriate person or persons in possession of responsive documents from whom they may be provided. *See* Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

<sup>7</sup> Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).