

Issue: Compliance – Grievance Procedure (documents); Ruling Date: September 18, 2013; Ruling No. 2014-3715; Agency: Department of Motor Vehicles; Outcome: No Ruling – issue is moot.



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 2014-3715
September 18, 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 respond to document requests in a timely and/or compliant manner. The grievant states that, in this instance, the agency did not provide an individualized response describing any reasons for not producing documents as to each request. After requesting this ruling, the agency provided, it appears, such an individualized response. While the grievant is correct that the agency was under a duty to provide a more complete response to the document requests and to do so in a timely manner,¹ the agency has now complied with that requirement. Thus, the agency has rendered moot this issue of noncompliance.

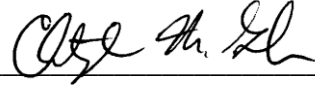
The grievant maintains that the agency still engaged in noncompliance because its failure was not corrected within five workdays of being notified of the issue. Although in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party,² 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. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

The relatively minor delay in this instance would not constitute substantial noncompliance with the grievance procedure. Further, although there have been other delays in this case, we cannot find that any repeated noncompliance, if there has been any, amounts to substantial noncompliance either. EDR also finds no indication of any bad faith on the part of the agency warranting relief on the merits of the case. While EDR does not condone any party failing to comply with the time limits set forth in the grievance process, this case is complex due to various surrounding issues. It cannot also be said that all delays rest solely with one side or the other.

¹ See *Grievance Procedure Manual* § 8.2; EDR Ruling No. 2014-3650.

² See Va. Code § 2.2-3003(G).

EDR's rulings on matters of compliance are final and nonappealable.³



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³ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).