

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: October 18, 2013; Ruling No. 2014-3728; 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 2014-3728  
October 18, 2013

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

FACTS

On or about September 12, 2013, the grievant initiated a grievance with the University. On the same date, the grievant also submitted a request for documents. The University notified the grievant that it could not provide the documents he had requested on September 16, 2013. The grievant notified the University President that the University was not in compliance with the grievance procedure on the following day, September 24, 2013.<sup>1</sup> After the University did not correct the alleged noncompliance, the grievant requested a compliance ruling from EDR on October 4, 2013.

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.”<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup>

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<sup>1</sup> It appears that the notice of noncompliance was inadvertently misplaced after it was delivered by the grievant. The grievant delivered another copy of the noncompliance notice, and on October 7, 2013, the University President responded, upholding the University’s decision to not produce the requested documents.

<sup>2</sup> Va. Code § 2.2-3003(E); *see Grievance Procedure Manual* § 8.2.

<sup>3</sup> *Grievance Procedure Manual* § 9.

<sup>4</sup> *See, e.g.*, EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>5</sup> Va. Code § 2.2-3003(E); *see 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.<sup>6</sup>

In his grievance, the grievant challenges his supervisor’s decision to require submission of daily work reports and notification of the grievant’s arrival at and departure from work each day. The grievant has requested documents relating to arrival and/or departure notifications and daily work reports prepared by other employees. The University claims that the documents sought by the grievant would include the personnel records of another individual, and that it is not required to produce such records according to the requirements of the Virginia Freedom of Information Act (“FOIA”).<sup>7</sup> The University also appears to assert that, even if it were required to produce the requested documents under the grievance procedure, the only responsive documents relate to the grievant and a single other employee. The University argues that it cannot adequately protect the confidentiality of this individual because, regardless of any steps it takes to remove personal and/or confidential information, the grievant will know the identity of the employee in question. The grievant states that the provisions of FOIA do not apply to the grievance procedure’s document disclosure process and that the documents “should be redacted as necessary.”

With respect to the University’s assertion that it cannot produce personnel records pursuant to the provisions of FOIA, such reliance is misplaced. EDR has consistently held that document requests under the grievance statutes are not associated with FOIA.<sup>8</sup> While EDR will look to FOIA for guidance as to what documents shall be produced under the grievance procedure, FOIA exemptions do not generally provide automatic protection from disclosure. Further, EDR has frequently ruled that the personnel records exemption is inapplicable in grievances.<sup>9</sup> Indeed, the grievance statutes specifically contemplate the production of documents related to nonparties.<sup>10</sup> Accordingly, we do not find that the FOIA exemption cited by the

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<sup>6</sup> *Grievance Procedure Manual* § 8.2.

<sup>7</sup> See Va. Code 2.2-3705.1 (stating that “[p]ersonnel records containing information concerning identifiable individuals” need not be disclosed under FOIA unless requested by the person who is the subject of the records).

<sup>8</sup> See, e.g., EDR Ruling Nos. 2010-2381 and 2009-2136; see also *Frequently Asked Grievance Questions*, <http://www.dhrm.virginia.gov/EDR/faqs.htm>.

<sup>9</sup> E.g., EDR Ruling Nos. 2009-2348, 2009-2357; EDR Ruling No. 2006-1312.

<sup>10</sup> Va. Code § 2.2-3003(E); EDR Ruling Nos. 2009-2272, 2009-2289.

University is sufficient to justify denying the grievant the requested documents. However, there are other reasons why these documents need not be produced.

The grievant appears to be alleging in this grievance that daily work briefs and time reports are “required of no other subordinates.” In responding to the grievant’s request for documents, however, the agency explained that “[the grievant’s] supervisor directed the two employees providing IT support to the College to provide the daily work and time reports.” The two employees in question are the grievant and another employee. While some additional relevant information, such as the content of the reports, may be contained in the documents requested by the grievant, we find that there is just cause for the agency to withhold the requested documents in this case. For example, the grievant has requested all work reports, related communications, and “time-clock event[s],” other than his own, that were submitted to his supervisor between October 8, 2011 and September 12, 2013. It would be unduly burdensome to require the University to produce approximately two years’ worth of documents in this case when the agency has already provided conclusive information that answers the question raised by the grievance and apparent reason for the grievant’s document request. Because the requested documents would not appear to provide any material information as to the questions raised in this grievance, we find that there is just cause for the agency to withhold the documents requested by the grievant.

#### CONCLUSION

For the reasons set forth above, the agency is not required to produce the documents requested by the grievant in this case. It is our understanding that, when the grievant requested this ruling, the grievance process was temporarily halted after the first resolution step. The grievant is, therefore, directed to advance to the second step or conclude his grievance **within five workdays of receipt of this ruling.**

EDR’s rulings on matters of compliance are final and nonappealable.<sup>11</sup>



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<sup>11</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).