

Issue: Compliance – Grievance Procedure (documents); Ruling Date: November 26, 2014; Ruling No. 2015-4019, 2015-4020, 2015-4021; Agency: University of Virginia Medical Center; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Numbers 2015-4019, 2015-4020, 2015-4021
November 26, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) regarding alleged noncompliance with the grievance procedure by the University of Virginia Medical Center (the University or the agency) in failing to produce requested documents.

FACTS

The grievant initiated three grievances with the University, two dated September 15, 2014, and one dated September 11, 2014, and requested documents pertaining to each on October 13, 2014. The University argues that each request is irrelevant to the three grievances at issue, and further, that it possesses no responsive documents and should not be required to create such documentation under the *Grievance Procedure Manual*. The grievant now seeks a compliance ruling from EDR.

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, in a timely fashion.”¹ 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.”² 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.³

¹ Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

² *Grievance Procedure Manual* § 9.

³ See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

Moreover, EDR has 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.⁴

In this case, the document requests at issue were submitted via email to the agency from the grievant on October 13, 2014, and consist of the following items:

“ . . . I am requesting the agency provide the number of predetermination meetings you have had with respect to me. In addition, I am also requesting the number of predetermination meetings you have had with the other two engineers. I request that the agency provide the number of Formal counseling actions that you have submitted specifically for inclement weather events over the previous two years.”

“ . . . I am requesting the agency provide the number of team members required to carry pagers as a result of the restructuring of job assignments. In addition, I would like to know how many team members post job assignment change were designated as the single point of entry for all calls for that sub-team. Example, Apps team, desktop team member, etc.....

“ . . . I am requesting the agency provide the date [Employee M] was promoted to Systems Engineer as well as his exact job title. In addition, I am requesting the starting date of [Employee J] as a systems engineer as well as his exact job title. Please supply the amount of time or experience each of the engineers mentioned above has in actual PACS administration.”

These requests cannot properly be considered requests for documents. Under the *Grievance Procedure Manual*, the agency must produce responsive documents in its possession or control.⁵ It is not required to create any documents in response to the grievant’s requests if such documents do not exist.⁶ Should the grievances be qualified for hearing, the grievant will be free to ask questions of agency witnesses to elicit testimony that may be relevant to the issues under consideration.

⁴ *Grievance Procedure Manual* § 8.2.


⁵ See EDR Ruling No. 2009-2087.

⁶ Va. Code § 2.2-3003(E).

The University also argues that the grievant's requests have no relevance to the issues being grieved. In response, the grievant argues that all of the requests are relevant to his three grievances, as they would demonstrate disparate treatment of him by the University. The management actions challenged in the grievance consist of the grievant's performance appraisal, an Informal Counseling Memorandum, and the grievant's job assignments. Having reviewed the information submitted by the parties, it appears that the requested information has limited, if any, relevance to the challenged management actions. Because it does not appear that documents responsive to these requests, if in fact any were in existence, would be relevant to the grievance, the agency is not required to produce such information at this time. As a result, there is no basis for EDR to conclude that the agency's response to the grievant's requests was not in compliance with the grievance procedure.

CONCLUSION

For the preceding reasons, there is no basis to find that the agency has not complied with the grievance procedure. EDR's rulings on matters of compliance are final and nonappealable.⁷



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⁷ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).