

Issue: Compliance – Grievance Procedure (documents); Ruling Date: July 24, 2015;
Ruling No. 2015-4130; Agency: Department of Social Services; Outcome: Agency
Not in Compliance.



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

COMPLIANCE RULING

In the matter of Department of Social Services
Ruling Number 2015-4130
July 24, 2015

The Department of Social Services (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s request for documents.

FACTS

The grievant applied for a supervisory position with the agency but was not selected. She initiated a grievance challenging the selection decision on January 9, 2015. In connection with her grievance, the grievant asked the agency to provide her with copies of “complete interview question and answer notes for position number [] of the selected candidate, the selected candidate’s interview summary report/selection memo, and the selected candidates’ application for the position, verified employment references and any other documents submitted by the selected candidate in reference to the position/application/selection.” The agency has provided the grievant with copies of the selected candidate’s interview question and answer notes, but now seeks a compliance ruling regarding the grievant’s remaining document requests.

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.”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 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.”⁴

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.

⁴ 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.⁵

In her grievance, the grievant asserts, in effect, that the agency’s selection process was biased against her and that the successful candidate was preselected. The grievant has requested the interview summary, references and application for the selected candidate, as well as the selection memorandum prepared by the agency.⁶ The agency appears to assert that the requested records are not properly subject to production because the grievant’s allegations of bias are unfounded.

During its investigation, EDR requested and reviewed the documents at issue in this case. As an initial matter, we note that the agency’s belief that its selection procedure was appropriate and that the grievant’s claims are without merit is not a basis in itself for denying access to documentation. Rather, in determining whether documents must be produced during the management resolution steps, EDR weighs the relevance—that is, the possible probative value—and materiality of the requested documents against possible competing interests, such as the privacy of other employees not involved in the grievance.

In this case, the selection memorandum sought by the grievant sets forth the agency’s reasons for its selection decision and is therefore clearly relevant to the grievant’s claims. Further, we find that the agency’s interest in protecting the privacy of the selected candidate does not outweigh the relevance and materiality of this document. Similarly, the privacy interest in the interview summary for the selected candidate would also appear to be outweighed by the relevance and materiality of this document to the grievant’s claims, particularly as the agency has already provided to the grievant the actual interview notes on which the summary is based. However, with respect to the selected candidate’s application and references, EDR’s review of these documents indicates that they contain little, if any, information of possible use to the grievant, while the agency has an understandable interest in protecting the privacy of the selected candidate and his references in regard to these documents. Balancing these two interests, EDR

⁵ *Grievance Procedure Manual* § 8.2.

⁶ The grievant also requested any other documents submitted by the selected candidate. As no specific documents have been identified that are responsive to this request, it will not be discussed further in this ruling.

concludes that the probative value of the selected candidate's application and references is not sufficient to require production of those documents by the agency at this time.⁷

Accordingly, the agency is ordered to provide copies of the selection memorandum and the selected candidate's interview summary **within ten workdays of receipt of this ruling.** These documents may be redacted by the agency if necessary to preserve the privacy of individuals not involved in the grievance. The agency is not required to produce the selected candidate's application and references. EDR's rulings on matters of compliance are final and nonappealable.⁸



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁷ In the event this grievance is qualified for hearing, the grievant may renew her request for the application and references with the hearing officer. If this occurs, this ruling will not bind the hearing officer in making his or her decision regarding whether production is warranted under the grievance procedure.

⁸ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).