

Issue: Compliance – Grievance Procedure (documents); Ruling Date: August 17, 2015; Ruling No. 2016-4186; Agency: Virginia Community College System; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of Virginia Community College System
Ruling Number 2016-4186
August 17, 2015

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 grievant’s claims of noncompliance against the Virginia Community College System (“agency”).

FACTS

The grievant applied for a position with the agency but was not selected. On June 9, 2015, he initiated a grievance challenging, in part, the selection process. In conjunction with his grievance, the grievant requested several documents from the agency. After the agency failed to provide all of the requested documents, the grievant advised the agency of its noncompliance and subsequently requested a compliance ruling by EDR on July 6, 2015.¹

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.”² 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.”³ 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.⁴ 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.”⁵

¹ The grievant requested additional documents from the agency on July 17, 2015. As these additional document requests were not addressed by the grievant’s July 6, 2015, request to EDR for a compliance ruling, they will not be discussed in this ruling. If the grievant wishes to assert that the agency is not in compliance with respect to his July 17, 2015 document requests, he may raise his claims of noncompliance through the process set forth in Section 6.3 of the *Grievance Procedure Manual*.

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

³ *Grievance Procedure Manual* § 9.

⁴ See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.


⁵ 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.⁶

Following the grievant’s July 6, 2015 request to EDR for a compliance ruling, the agency apparently produced additional documentation to the grievant. As a consequence, the only documents which are the subject of this ruling are the cover letters and resumes of those candidates who, like the grievant, were not selected for the position at issue. The agency asserts that these documents are not relevant to the grievant’s claims and notes that the requested material contains confidential information regarding non-parties.

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 requested materials regarding other unsuccessful candidates have little, if any, relevance to the grievant’s claim that he should have been selected for the position, while the agency has an understandable interest in protecting the privacy of the other unsuccessful candidates. Balancing these two interests, EDR concludes that the probative value of the other unsuccessful candidates’ cover letters and resumes is not sufficient to require production of those documents by the agency at this time.⁷

EDR’s rulings on matters of compliance are final and nonappealable.⁸



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⁶ *Grievance Procedure Manual* § 8.2.

⁷ In the event this grievance is qualified for hearing, the grievant may renew his request for these documents 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).