

Issue: Compliance – Grievance Procedure (documents); Ruling Date: October 27, 2015; Ruling No. 2016-4241; 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 the Department of Social Services
Ruling Number 2016-4241
October 27, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management related to alleged noncompliance with the grievance procedure by the Department of Social Services (the “agency”) in relation to the production of requested documents.

FACTS

The grievant is employed by the agency as a Licensing Administrator. In early 2015, the agency conducted an internal Compression Study of salaries for certain employees, including the grievant and other employees who are Licensing Administrators. As part of the Compression Study, the agency’s Human Resources Office determined that a salary increase was not justified for the grievant. The grievant initiated a grievance on or about July 10, 2015 alleging that the Compression Study was “flawed” because it was “based on incomplete information . . . that was too narrow in scope.” The grievant specifically disputes the agency’s assessment of her work experience and its decision that “other licensing administrators with less experience and less education” were “more qualified” than her, with the result that they received a salary increase and she did not.

The grievant requested documents from the agency relating to its assessment of the Licensing Administrators’ past work experience as it was used in the Compression Study. EDR considered whether the agency was required to produce the documents requested by the grievant in EDR Ruling Number 2016-4222, issued September 18, 2015. In that ruling, EDR directed the agency to provide the grievant with information from the Employment Application Evaluation Sheets of the Licensing Administrators.¹ On September 28, the agency produced redacted copies of the Employment Application Evaluation Sheets. The names of the Licensing Administrators, as well as their previous employers and job titles, had been redacted from the documents. The grievant requested a compliance ruling from EDR on the following day, September 29, alleging that the agency had improperly redacted information about the other Licensing Administrators’ employment history from the Employment Application Evaluation Sheets.

¹ EDR Ruling No. 2016-4222.

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 Consequently, redactions of certain information of non-parties can be appropriate under the grievance procedure.

In this case, the grievant alleges that the agency’s redaction of the Application Evaluation Sheets does not comply with the grievance procedure because the Licensing Administrators’ work history is “directly relevant to the grievance issues” and “employment history is not considered ‘personally identifying information’” under the grievance procedure. The Employment Application Evaluation Sheets were used by the agency to document the Licensing Administrators’ work history for purposes of the Compression Study and consist, in relevant part, of a list of former employers, job titles, and length of employment. Using that information, the agency determined whether each employee’s former positions were “Directly Related,” “Closely Related,” “Indirectly Related,” or “Not Related” to his/her current position and noted it on the Employment Application Evaluation Sheet. Based on that assessment, the agency then calculated the relevant years of experience for each position, which were added together to determine each employee’s total relevant years of experience.⁶ In the documents it provided to the grievant, the agency redacted the name and position number for each Licensing Administrator, as well as former employers and job titles. Thus, the documents in the grievant’s possession are effectively lists of the agency’s determinations about the relatedness of the Licensing Administrators’ previous employment and the corresponding calculations of their relevant experience. The documents contain no information about the nature of the Licensing

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.

⁶ Though the process by which the agency determined how much credit in terms of overall work experience should be awarded based on past work experience is not directly relevant to the issues in this case, the agency apparently adjusted past employment length based on the determination of its relatedness to the employee’s current position. For example, “Directly Related” positions were credited at 100% of the length of employment, “Closely Related” positions were credited at 75% of the length of employment, “Indirectly Related” positions were credited at 50% of the length of employment, and “Not Related” positions were not given credit. Past part-time employment was adjusted to provide credit for 50% of its duration.

Administrators' past employment or any context to explain how the agency concluded whether and to what extent former positions were related to their current position.⁷

The employment history of agency employees, including former employers and job titles, might be considered personally identifying information, and thus could potentially be redacted in the interest of preserving the privacy of nonparties to a grievance in some circumstances. In this case, however, the grievant has not requested documents about the Licensing Administrators' work history to discover the content of that information. The central issue in the grievance is, instead, whether the agency assessed the grievant's past work experience consistent with the other employees to whom the grievant was compared for purposes of the Compression Study. In other words, the Licensing Administrators' past employment is relevant because the grievant believes her work history was not categorized in the same manner as theirs. In the redacted format in which they have been provided to the grievant, the Employment Application Evaluation Sheets are of minimal value to the grievant in determining whether the agency considered her work history in the same way that it considered the other Licensing Administrators' work history. Without information about the Licensing Administrators' past employers and job titles, the grievant has no meaningful ability to understand how or whether the agency's decisions regarding their work history were consistent with its assessment of her own past work experience.

In support of its position that the redactions were appropriate, the agency states that disclosing full employment histories for the other Licensing Administrators would potentially allow the grievant to determine their identities and salaries, as well as whether they were given a salary increase as a result of the Compression Study. While the agency's concern is understandable, it is ultimately not persuasive. EDR must consider that the Virginia Freedom of Information Act ("FOIA") provides that, "[e]xcept as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth."⁸ While salary information is a personnel record that could normally be withheld,⁹ FOIA specifically requires disclosure of "records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body"¹⁰ The FOIA Advisory Council has also opined that, upon request, public bodies must provide the names of current employees in addition to their salary information.¹¹ Thus, the grievant could submit a FOIA request for the names and current salaries of the other Licensing Administrators and the agency would be compelled to release that information to her.¹²

⁷ According to information provided by the agency, the determination of relatedness was based on a comparison of the employee's description of each position from his/her application or resume and his/her most recent Employee Work Profile. Thus, employees who previously worked in positions with the same or similar job titles could receive different credits for relevant experience if their job duties and responsibilities differed.

⁸ Va. Code § 2.2-3704.

⁹ *Id.* § 2.2-3705.1(1).

¹⁰ *Id.* § 2.2-3705.8.

¹¹ Va. FOIA Council Adv. Op., AO-01-02 (Jan. 16, 2002).

¹² Though EDR has not directly addressed the question of whether a request for names and salaries of agency employees must be produced under the grievance procedure, EDR will look to other analogous laws and regulations for guidance if needed in interpreting the document discovery provisions of the grievance procedure. To that end,

For these reasons, and in considering the totality of the circumstances in this case, EDR concludes that the agency's interest in protecting the identity of the Licensing Administrators and their current salaries is less compelling than the grievant's interest in having access to documents that contain relevant information relating to her specific assertion that the agency did not conduct a fair assessment of her past work experience. Furthermore, 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. If, as the grievant alleges, there are indeed issues or discrepancies in the agency's assessment of her work history as compared to other employees, the agency will be in the best position to resolve the grievance by offering relief during the management resolution steps. Allowing the grievant to review all relevant documents, including the requested Employment Application Evaluation Sheets with past employers and job titles unredacted, will facilitate the resolution of the issues in this case by affording the grievant an opportunity to identify and present her concerns about the Compression Study to agency management as fully as possible.

CONCLUSION

For the reasons set forth above, the agency is directed to produce the requested Employment Application Evaluation Sheets, without redacting past employers and job titles, **within ten workdays of the date of this ruling**. The agency must redact other personally identifying information from the documents produced to protect the privacy of nonparties.¹³

EDR's rulings on matters of compliance are final and nonappealable.¹⁴



Christopher M. Grab
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principles and approaches arising FOIA are an immediately relevant resource. That FOIA requires the release of current salary information, including the names of agency employees, strongly supports the proposition that that information should also be discoverable as a matter of the grievance procedure as well, so long as it is relevant to the grievance.

¹³ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

¹⁴ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).