

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: October 28, 2016; Ruling No. 2017-4433; Agency: Department of Corrections; Outcome: Agency in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2017-4433
October 28, 2016

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 Corrections (the “agency”) in relation to the production of requested documents.

FACTS

The grievant is employed by the agency as a Superintendent. On or about June 24, 2016, the grievant was issued a Written Counseling Memorandum (the “Counseling Memo”) addressing her actions in relation to a recruitment and selection process for an open position at the facility where she works. The grievant filed a grievance disputing the Counseling Memo on or about July 22, 2016. The grievant requested that the agency produce all documents and emails relating to the agency’s investigation of the recruitment process that resulted in the issuance of the Counseling Memo. The agency provided the grievant with copies of an investigative report, relevant emails, and other documents. The names and personal information of nonparties to the grievance were redacted from some of the documents. EDR received a request for a compliance ruling from the grievant on October 17, 2016, in which the grievant alleges that the agency improperly redacted the names of individuals from the documents disclosed to her.

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

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

² *Grievance Procedure Manual* § 9.

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

In this case, the grievant alleges that the documents provided to her “have been redacted and are unclear,” and that “the names of the parties must be fully disclosed since they are relevant [sic] to the Grievance” In essence, the grievant appears to argue that she is unable to fully understand and, by extension, challenge, the agency’s justification for the Counseling Memo without reviewing the requested documents in an unredacted format. Under circumstances such as those present here, EDR will weigh the requesting party’s particular interests in obtaining the unredacted document against the interests expressed by the party for redaction.

Upon balancing the interests of both parties in this case, and in light of available facts, EDR finds that the agency’s interest in redacting the names of the individuals who provided information in conjunction with its investigation outweighs the grievant’s interest in obtaining the documents in unredacted form. From EDR’s review of the documents the grievant has received, the agency appears to have removed only the names of the employees involved, along with certain other personal information that is not relevant to the grievance. In addition to the documents with redactions, it appears the grievant also received unredacted copies of all emails she sent, that were sent to her, and on which she was copied and that were collected as part of the investigation. Those emails contain the names of the individuals involved and accounts of the recruitment process of which the grievant was aware prior to the submission of her requests for documents.

EDR does, however, appreciate the grievant’s general concerns about the redactions in this case. While on the one hand the agency’s motivation to protect the identities of witnesses supplying information in an investigation is understandable, it is an entirely separate matter to withhold any identification of other individuals involved in an incident or action that is the subject of a grievance. Failing to disclose information about the actors can unduly limit a grievant’s ability to understand and contest a management action in such a situation. Nevertheless, in this case, the alleged conduct by the grievant that gave rise to the Counseling Memo is fairly narrow and known to the grievant. Further, the grievant should be well aware of the principal employees involved in this situation as she interacted with them during the events at issue and has received other unredacted documentation. While EDR could very easily reach the opposite conclusion in another case with different facts, the redactions in this case are acceptable under the grievance procedure. Importantly, the grievant has not articulated, nor is EDR able to identify, any specific way in which the grievant’s ability to dispute the Counseling Memo is unfairly limited by the redactions at issue.

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

⁴ Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

While the grievant desires the agency to disclose the identities of any employees who provided information in conjunction with the investigation, the agency has provided her with the documents responsive to her requests in a readily understandable format that also adequately protects the privacy of nonparties to the grievance. For these reasons, and in considering the totality of the circumstances in this case, EDR concludes that the redactions made by the agency are acceptable here. This result is consistent with the provisions of the grievance statutes providing 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 Accordingly, the agency is not required to produce unredacted copies of the documents sought by the grievant.

CONCLUSION

For the reasons set forth above, EDR concludes that the agency’s production of documents in this case complies with the grievance procedure. It is EDR’s understanding that, when the grievant requested this ruling, the grievance process was temporarily halted after she had received the third step response. If the grievant wishes to continue to the next step of the grievance process, she is directed to submit a request to the agency head seeking qualification of her grievance for a hearing **within five workdays of the date of this ruling**. If she does not wish to continue with her grievance, she should notify the agency’s human resources office in writing immediately.

EDR’s rulings on matters of compliance are final and nonappealable.⁶



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⁵ *Id.*

⁶ *See* Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).