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RECONSIDERED COMPLIANCE RULING

In the matter of the Department of Taxation
Ruling Number 2020-5018
December 10, 2019

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ reconsider its compliance determination in Ruling Number 2020-4993. In that ruling, EDR held that the Department of Taxation (the “agency”) was not required to produce a document requested by the grievant because it was not relevant to the issues challenged in his grievance.

The grievant filed a grievance on July 9, 2019, alleging “[p]ay inequality and possible pay discrimination” based on the agency’s use of a market study assessment to adjust pay practices, specifically hiring ranges and current salaries, for employees in different regions of the state. The grievant requested a copy of the market study assessment, which the agency did not produce.² In EDR Ruling Number 2020-4993, this Office determined that the market study assessment was not relevant to the grievance because it did not contain information that was used in the agency’s decision to change pay practices for the area in which the grievant worked.³ The grievant has submitted a request for reconsideration, in which he contends that EDR’s analysis of the market study assessment was inconsistent with information that agency management shared with him and other employees. In support of his argument that the document is relevant, the grievant cites to information he received during the management steps that suggests the agency relied, at least in part, on the market study assessment to adjust statewide salaries, including the region where he worked.

EDR relied upon the agency’s representations about the content of the market study assessment when considering the relevance of the document in its initial ruling. Upon receiving the grievant’s request for reconsideration, EDR requested a copy of the market study assessment from the agency, which it has provided. EDR has carefully and thoroughly reviewed the document and finds no basis to alter its decision on the grounds presented by the grievant. The

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The grievant also requested a second document, which the agency agreed to produce. According to the agency, this second document was emailed to the grievant on November 21, 2019.

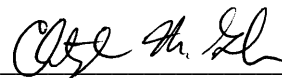
³ The grievant resigned from employment with the agency while his grievance was pending.

market study assessment itself states that it has two objectives: to address market rates for specific entry-level jobs statewide, and also for Interstate and Northern Virginia audit staff. The market study provides recommendations for employees in the Richmond area and in Northern Virginia, based on salary data from comparable cities in other states. The grievant was not employed in one of the specific entry-level jobs, but rather as an auditor, although not in Northern Virginia or Interstate as addressed in the study document. The market study does not contain data about any cities in the region where the grievant worked. In other words, EDR's review of the market study assessment suggests that it was used as represented by the agency in EDR's initial ruling, and that the agency's decision to evaluate its statewide pay practices more thoroughly, including in the area where the grievant worked, was not directly based on data obtained from the market study.

Nonetheless, it cannot be said that the information in the market study assessment has no relevance to the grievant's claims regarding his dispute about the agency's pay practices. For example, the document contains potentially relevant data about market pay rates for employees in the Richmond area, which appears to have served as the baseline for the agency's decisions about adjusting pay practices in other areas of the state, including the region where the grievant worked. Various auditor positions are included in this list of market rates, presumably including the grievant's position. Moreover, the market study assessment contains generic information about general benefits for state employees as compared with the benefits provided by other employers, which is also a relevant factor for setting competitive salary rates. In short, there is some level of relevant information about the grievant's claims, however limited, to be gained from a review of the market study assessment. Furthermore, EDR has not reviewed anything to demonstrate that it would impose an undue burden on the agency to produce the document. Having balanced the interests of the parties, EDR therefore finds that the market study assessment must be provided to the grievant. Because the document includes salary data that is not relevant to the grievant's arguments regarding his former position, the agency may redact pay information used or obtained in the course of the study that is not related to the grievant's former position.⁴

Accordingly, the agency is ordered to provide the grievant with a copy of the market study assessment, subject to the redactions discussed above, **within ten workdays of the date of this ruling**. It is EDR's understanding that the grievance process was temporarily halted to address this compliance issue after the grievant received the third step response. After he receives the document from the agency, he must either conclude the grievance or request qualification for a hearing from the agency head within five workdays.

EDR's rulings on matters of compliance are final and nonappealable.⁵



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⁴ The grievance procedure states that “[d]ocuments pertaining to non-parties 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.” *Grievance Procedure Manual* § 8.2. In this case, EDR interprets this language to allow for the redaction of salary information about positions other than the grievant's that were assessed as part of the market study.

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