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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2020-5068
March 17, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ on whether his February 18, 2020 grievance with the Department of Corrections (the “agency”) is in compliance with the grievance procedure.

FACTS

On February 5, 2020, the grievant requested records from the agency pursuant to the Virginia Freedom of Information Act (“FOIA”).² The grievant sought “all documentation related to an investigation” that began in October 2018, of which he was allegedly the subject. The agency initially responded on February 12 that it was unable to provide the records within 5 working days as required by FOIA and invoked its right to extend the response time for an additional seven working days.³ In a second response dated February 13, the agency informed that grievant that the documents were exempt from mandatory disclosure under FOIA because they contained personnel information, and thus they would not be provided to him.⁴

The grievant filed a grievance with the agency on February 18, 2020, alleging that his FOIA request was improperly denied. The grievant further explains that he received disciplinary action because of the investigation,⁵ that he believes the investigation was not carried out

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 See Va. Code §§ 2.2-3700 through 2.2-3715.

³ See *id.* § 2.2-3704(B)(4).

⁴ *Id.* § 2.2-3705.1(1). This section also provides, however, that access to personnel information “shall not be denied to the person who is the subject thereof.” *Id.* The agency’s response appears to indicate that the documents contain personnel information of individuals other than the grievant. The agency also characterized the records as “working papers” that are exempt from mandatory disclosure under FOIA. See Va. Code § 2.2-3705.7(2). Whether the documents would satisfy either exemption under the statute is not for EDR to determine.

⁵ The grievant filed a separate grievance with the agency challenging the disciplinary action. During the management steps, the agency rescinded the discipline and transferred the grievant to another facility at his request. The grievant appears to have subsequently concluded the grievance about the disciplinary action.

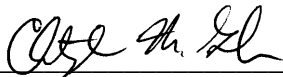
appropriately, and that he has allegedly experienced retaliation as a result of the investigation. The grievant identified the date of the challenged management action as “February 5, 2020 – ongoing,” which coincides with the date of his FOIA request. As relief, the grievant requested that the agency produce “all documents related to the pre-determined ‘investigation.’” On February 26, the agency notified the grievant that the grievance would be administratively closed because it did not comply with the initiation requirements of the grievance procedure.⁶ The grievant now appeals that determination to EDR and seeks to re-open the grievance.

DISCUSSION

In general, “any management actions or omissions may be grieved” by an employee, so long as the grievance complies with the initiation requirements of the grievance procedure.⁷ In some circumstances, however, the subject of a grievance may not be susceptible to relief through the grievance procedure. When this is the case, EDR will consider whether a grievance may be administratively closed, in part, on the basis that a grievance may not “used to . . . impede the efficient operations of government.”⁸

Here, the grievance challenges the agency’s failure to produce documents in response to a FOIA request. EDR has no authority to enforce the provisions of FOIA. A person denied the rights and privileges conferred by FOIA must seek enforcement of FOIA’s provisions in a court of appropriate jurisdiction.⁹ As a result, EDR finds that the grievance does not challenge a management action or omission that may be addressed through the grievance procedure. The agency has provided the grievant with a response to his FOIA request as required by statute, and EDR cannot resolve the grievant’s claims relating to FOIA. Accordingly, EDR finds that allowing the grievance to proceed would serve no purpose other than to impede the efficient operations of agency. To the extent the grievant alleges that the agency’s production of documents was not consistent with the requirements of FOIA, he must seek redress for such claim(s) through the courts.

For these reasons, the grievant’s February 18, 2020 grievance will remain closed. The parties are advised that the grievance should be marked as concluded due to initiation noncompliance and no further action is required. EDR’s rulings on matters of compliance are final and nonappealable.¹⁰



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⁶ See *Grievance Procedure Manual* § 2.4.

⁷ *Grievance Procedure Manual* § 2.4.

⁸ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(4); see EDR Ruling No. 2020-4973.

⁹ See Va. Code § 2.2-3713.

¹⁰ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).