

Issue: Compliance/5-day rule, other; Ruling Date August 24, 2001; Ruling #2001-136;  
Agency: Department of Juvenile Justice; Outcome: In compliance agency. Appealed to  
the Circuit Court of the County of Henrico; File Date: February 8, 2002; Case #CH02-  
129; EDR Decision affirmed.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice  
Ruling Number 2001-136  
August 24, 2001

**ISSUE:**

Did the agency provide the grievant with documentation as required by the grievance procedure?<sup>1</sup>

**RULING:**

Yes, the agency provided documentation in compliance with the grievance procedure. The grievant has **five working days** from receipt of this ruling to notify the agency of his intention to conclude his grievance or advance it to the next step. This Department's rulings on matters of compliance are final and nonappealable. (See Va. Code § 2.1-116.03(5)).

**EXPLANATION:**

On June 14, 2001, the grievant initiated a grievance challenging his transfer and requested, pursuant to the grievance procedure, "copies of all documents that have been produced as a result of any and all complaints made regarding me."<sup>2</sup> The agency provided him with a packet of responsive documents. The packet did not include any report arising from his April 25, 2001 investigative suspension. The grievant states that the Inspector General's office had advised him that investigative suspensions like his should result in a written report. Believing that a report existed, the grievant notified the agency head of the agency's failure to provide such a report. The agency responded that an investigative report did not exist.

The grievance statute provides that "[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to actions grieved shall be made available upon request from a party to the grievance, by the opposing party."<sup>3</sup> This

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<sup>1</sup> The grievant's separate claim that he did not receive a timely second step response has been resolved and will not be further addressed.

<sup>2</sup> See *Grievance Procedure Manual*, § 8.2 "Documentation Relating to a Grievance," page 21; grievant's letter of June 14, 2001.

<sup>3</sup> Va. Code § 2.1-116.05(F); *Grievance Procedure Manual*, Section 8.2, page 21.

Department's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related documentation *must* be provided.

The grievance 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."<sup>4</sup> Documents, as defined by the Rules of the Supreme Court of Virginia, include "writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form."<sup>5</sup> Significantly in this case, however, a party is not required to create a document if the document does not exist.<sup>6</sup>

During this Department's investigation for this ruling, the grievant's supervisor reconfirmed that there was no written investigation and clarified that she had only verbally shared her findings with the upper management. The agency is not responsible for creating a document that does not exist, we conclude that the agency has complied with the grievance procedure's documentation provisions.

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Director

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Deborah M. Amatulli  
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<sup>4</sup> *Id.*

<sup>5</sup> See Rules of the Supreme Court of Virginia, Rule 4.9(a)(1).

<sup>6</sup> Va. Code § 2.1-116.05(F); *Grievance Procedure Manual*, Section 8.2, page 21.