

Issue: Compliance/agency requested that EDR disclose names of individuals who provided information used in Ruling 2003-179; Ruling Date: February 6, 2004; Ruling #2004-595; Agency: Alcoholic Beverage Control; Outcome: EDR declines to release consultant's interview notes



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Alcohol Beverage Control
February 6, 2004

The parties to a July 30, 2003 grievance initiated by an employee of the Department of Alcohol Beverage Control (ABC) have requested that this Department (EDR) disclose the names of individuals who provided information used in this Department's Ruling qualifying the July 30th grievance for hearing (EDR Ruling #2003-179). Counsel for the grievant also requests the disclosure of any written statements provided by these individuals along with the interview notes of the EDR Consultant who interviewed those persons. For the reasons set forth below, this Department declines to release the EDR Consultant's interview notes or reveal the identity of the individuals who provided EDR with information.

FACTS

The grievant was employed as the Education Manager at ABC until her position was abolished on June 17, 2003. The grievant claims that her layoff from ABC was arbitrary and capricious. Further, she asserts that this action was taken in retaliation for her meeting with one of the Commissioners of ABC's Board.¹ Specifically, she claims that the Enforcement Director was upset with her for going "over his head" to express concerns about the management of the Education Section.

During this Department's investigation, another ABC employee reported to an EDR Consultant that the Enforcement Director had stated that he wanted to change agency accounting line codes so he could lay off the grievant. The same employee also claims to have heard the Enforcement Director comment on more than one occasion that he was upset with the grievant for going to the Board Commissioner and for causing trouble for her supervisor. However, another employee stated to the EDR Consultant during this Department's investigation that the decision to shift Education's budget under Law Enforcement was made primarily to avoid cuts in the Tax Management Section of ABC. As a result, the agency "swapped" the accounting lines of Tax Management and Education so that the cuts could come from the Education Section.

¹ The Board is the governing body of ABC and is comprised of a chairman and two members (Commissioners). See www.abc.state.va.us <last visited December 3, 2003>.

DISCUSSION

As an initial point, EDR publishes its administrative rulings and hearing decisions on its Web site in order to provide guidance and insight into the grievance process. In order to minimize the loss of personal privacy, it has been the regular policy of this Department to not reveal the names of individuals in its rulings.² Moreover, the Virginia Freedom of Information Act (FOIA) contains an express exclusion that affords this Department the discretion to not disclose information provided in confidence to EDR with respect to an EDR investigation, consultation, or mediation.³ EDR has been consistent in its exercise of that discretion and has routinely elected not to release such information. EDR believes that the release of such information could have a chilling effect on potential witnesses, causing them to be more reluctant to share information with EDR Consultants during ruling investigations.

While EDR is cognizant of the value that the information sought could have to both parties, it should be noted that EDR was able to obtain this information without extraordinary effort. The requested information was gathered by EDR through basic investigative procedures. Accordingly, the parties are urged to conduct their own investigations into the issues raised in this grievance and the circumstances surrounding the grievant's layoff.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

² Section 8.1 of the *Grievance Procedure Manual*, states that "EDR will publish rulings and hearing decisions on its Web site in a manner that seeks to preserve personal privacy." *Grievance Procedure Manual*, § 8.1, page 21.

³ Va. Code § 2.2-3705 provides that certain documents are excluded from the Virginia Freedom of Information Act but may be disclosed by the custodian in his [or her] discretion, except where such disclosure is prohibited by law. Va. Code § 2.2-3705 (74) excludes from FOIA's disclosure requirements "[i]nformation furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation."

⁴ Va. Code § 2.2-1001(5).

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