

Issue: Compliance/requests for documents relating to grievance; Ruling Date: November 9, 2004; Ruling #2004-878; Agency: Department of Corrections; Outcome: agency ordered to provide documents



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections/ No. 2004-878
November 9, 2004

The grievant has requested compliance rulings on his May 15, 2004 and July 16, 2004 grievances. He asserts that the Department of Corrections (DOC or agency) has not replied to his requests for documents relating to his grievances.

FACTS

In September of 2002, the grievant initiated a grievance in which he claimed that the preferential treatment of a particular inmate (Inmate E) by another DOC employee who served as the Inmate Hearing Officer had undermined his authority with other inmates and created a hazardous work environment. The grievance advanced to an administrative hearing where one of this Department's (EDR's) hearing officers found "that because Inmate E was given special consideration when facing disciplinary action, the agency emboldened Inmate E and made him feel protected when making direct or indirect threats against Grievant."¹ The hearing officer further found that the "grievant was placed in reasonable fear of injury by Inmate E."² The hearing officer concluded that by "failing to apply IOP [Internal Operating Procedure] 861 the agency failed to properly protect Grievant from workplace violence" and that the "agency's actions were contrary to the DHRM Policy 1.80, *Workplace Violence*."³ The hearing officer ordered the agency to "comply with IOP 861 and thereby protect Grievant from workplace violence."⁴

The grievant asserts that since prevailing at hearing, he has been subjected to retaliatory actions. On May 15, 2004, the grievant initiated a grievance alleging that 10

¹ In particular, the hearing officer determined that the Inmate Hearing Officer (IHO) had violated policy because he "(1) dissuaded Grievant from filing charges against Inmate E, (2) arbitrarily dismissed charges against Inmate E while Inmate E 'was working for' the IHO, and (3) shredded a stack of charges pending against Facility inmates." October 20, 2003, Hearing Decision Case #5183, page 6. The hearing officer held that the "IHO's actions made Inmate E believe he could abuse his relationship with Grievant and made Grievant unnecessarily fear injury by Inmate E and by inmates within Inmate E's immediate circle of friends." October 20, 2003, Hearing Decision, pages 6-7.

² October 20, 2003, Hearing Decision Case #5183, page 7.

³ *Id.*

⁴ *Id.*, page 8.

days earlier, on May 5th, the Major had belittled and demeaned him in the presence of other staff. He asserts that the Major's actions were retaliation for his previous grievance.

On June 17, 2004, the grievant was transferred to another correctional institution. On July 16, 2004, the grievant initiated a grievance in which asserted that the agency (1) continues to negate a significant number of inmate disciplinary charges which undermines the authority of corrections officers, and (2) retaliates against those who oppose this purported agency practice. The grievant further asserts that his transfer to another agency facility was retaliation for his having raised concerns about the agency's alleged continued practice of dismissing valid disciplinary charges against inmates.

On July 27, 2004, the grievant faxed the DOC agency head, informing him that the Warden had not released relevant information pertaining to his July 16th grievance.⁵ On August 3, 2004, the grievant requested that the EDR Director issue a ruling on the agency's failure to provide him with any requested documents. The grievant subsequently withdrew his ruling request and elected to advance his grievance to the next step prior to EDR's issuance of a compliance ruling.

On August 30, 2004, the grievant again faxed the DOC agency head, asserting that he could not continue his grievance until he received the following statements:

I request that I am provided the statement from the staff members that [the Regional Director] stated that the statements for the witnesses in the [May 5th] meeting indicate this is true.⁶

I also request that I be provided the statements from the management to [the Regional Director and Deputy Director] that is relevant to me being transferred. Also statements from officers that have claimed that my activities distracted them from doing their jobs.

In response to this request, the grievant was provided on September 9, 2004 with six redacted e-mail statements, each of which essentially asserted that comments made during the May 5th meeting were general in nature, not directed at anyone in particular, and were delivered in an appropriate, respectful manner. As to documents regarding the reasons for the grievant's transfer and his purported distracting activities, the agency responded that "[t]he other documents that you have requested do not relate to this grievance."

DISCUSSION

Failure to Produce Documents

⁵ The grievant incorrectly referred to the July 16th grievance as a July 17th grievance in a fax to the Agency head.

⁶ The grievant asserts that by this he meant that the agency should not have redacted the names of the individuals who had provided e-mail summaries of the May 5th meeting.

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.”⁷ This Department’s interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided.

The grievant has requested that he be provided statements from management to the Regional Director and Deputy Director that are relevant to his being transferred. The grievant further sought “statements from officers that have claimed that my activities distracted them from doing their jobs.” As noted above, the agency stated that the “documents that you have requested do not relate to this grievance.”

Contrary to the agency’s contention, the documents requested by the grievant appear to be relevant to his July 16th grievance. The July 16th grievance asserts that the agency retaliates against those who object to the invalidation of disciplinary charges issued to inmates. The grievance further asserts that the grievant’s transfer to another facility was retaliation for his raising concerns about the agency’s alleged continued practice of dismissing valid disciplinary charges. Thus, “statements from the management to [the Regional Director and Deputy Director] . . . relevant to [the grievant] being transferred” appear to be relevant to the grievant’s July 16th grievance and must be provided to the grievant within 5-workdays of receipt of this ruling unless ‘just cause’ exists for withholding such documents.

Statements from officers who claim that the grievant’s activities have “distracted them from doing their jobs” also appear to be relevant. On July 30, 2003, the agency’s Deputy Director wrote the grievant to suggest that a reason that he had been transferred was because his activities had become disruptive. The Deputy Director wrote:

Management at [Facility B] was also becoming increasingly concerned about the operation of [Facility B] and the safety of staff, the public and inmates. Their concern was that your daily activities there were possibly distracting other staff from performing their responsibilities. Therefore, a temporary reassignment seemed best for you and the facility.

Because the agency has asserted that the grievant’s daily activities purportedly had a disruptive impact on Facility B, any statements relating to the ‘disruptive’ effect would appear to be relevant in determining whether the agency’s stated non-retaliatory reason for the transfer was indeed a true reason for the transfer or mere pretext. Thus, the agency shall provide (absent just cause) any existing written statements from officers who claim that the grievant’s activities have “distracted them from doing their jobs,” within 5-workdays of receipt of this ruling. In accordance with the principles set forth below, these statements shall be redacted in a manner that preserves the privacy of non-parties to the grievance.

⁷ Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2.

Redaction

The grievant asserts that the agency's redaction of names from the six e-mail statements describing comments made during the May 5th meeting was inappropriate. The grievance statute 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."⁸ Here, the agency appears to have complied with this statutory requirement. The agency provided the grievant with the e-mail statements of those who were present at the May 5th meeting, but it simply redacted the names of those providing the statements. This Department has long held that redaction of names on witnesses statements is not only permitted but required. Thus, this Department finds no error with the agency's redaction.

Enforcement of the October 20, 2003 Hearing Officer's Order

As noted above, in the October 20, 2003 Hearing Decision, the hearing officer ordered the agency to "comply with IOP 861 and thereby protect Grievant from workplace violence." The July 16, 2004, grievance asserts that the agency (1) continues to negate a significant number of charges which has undermined the authority of corrections officers and (2) retaliates against those who oppose this purported agency practice. The negation of disciplinary charges and the purported undermining of correction officer authority is the very subject of the September 2002 grievance and more importantly, the October 20, 2003 Hearing Officer's Decision. As such, if the grievant wishes to enforce the hearing officer's order, the grievant should petition the circuit court in the jurisdiction in which the grievance arose for an order implementing the hearing officer's decision.⁹

CONCLUSION

For the reasons set forth above, this Department has determined that the agency must provide the documents described above within 5-workdays of receipt of this ruling or state with particularity the "just cause" for any non-disclosure. This Department's rulings on matters of compliance are final and nonappealable.¹⁰

Claudia T. Farr
Director

⁸ *Id.*

⁹ *See* Va. Code § 2.2-3006(D).

¹⁰ *See* Va. Code § 2.2-1001(5).

November 9, 2004
Ruling #2004-878
Page 6

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