

Issue: Compliance/documents; Ruling Date: November 19, 2004; Ruling #2004-900;
Agency: Department of Corrections; Outcome: agency in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2004-900
November 19, 2004

The grievant has requested a compliance ruling regarding the alleged failure by the Department of Corrections (DOC or the agency) to comply with this Department's previous decision in Ruling No. 2004-851. For the reasons set forth below, this Department finds DOC to be in compliance with its previous ruling.

FACTS

The grievant was employed by the agency as a Corrections Captain. On July 18, 2004, the grievant initiated a grievance to challenge his reassignment to another correctional unit. The grievant subsequently requested a compliance ruling from this Department on the grounds that the agency had failed to produce information relating to his grievance and to provide an appropriate second-step response. On October 18, 2004, this Department issued a compliance ruling in favor of the grievant, and ordered the agency to produce the requested documentation and information.

The grievant subsequently advised this Department on October 28, 2004 that the agency had not yet complied in full with the October 18, 2004 compliance ruling. The agency thereafter provided a number of additional documents to the grievant. The grievant has now advised this Department that the only information not provided by the agency is a copy of any P-5 forms he contends the agency was required to prepare following his transfer.¹

DISCUSSION

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."² This

¹ The agency states that the document sought by the grievant is created only on the creation or abolishment of a position, and not on an employee's transfer.

² Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2.

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

Documents pertaining to nonparties that are shall be produced in such a manner as to preserve the privacy of the grievance."³ Documents, as defined by the Rules of the Supreme Court of Virginia, include "writings, drawings, graphs, charts, photographs, phono-records, and compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form."⁴ To summarize, absent just cause, a party must provide the relevant documents upon request, in a manner that preserves the privacy

However, this duty of production extends only to documents that are in existence at the time the request is made. There is no duty for a party to create a document in order to respond to a document request.⁵

In this case, the agency has advised this Department that the P-5 documentation sought by the grievant does not exist. The grievant does not challenge the agency's position, but admits that he believes the agency never prepared such a document. While the parties have differing views on what a document should have been prepared under agency policy, there appears to be no dispute that the agency did not in fact do so. As the agency is under no duty to now create a P-5 form regarding the grievant's transfer in order to respond to his request for documents, we conclude that the agency has satisfied its obligations under this Department's previous ruling. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

Gretchen M. White
EDR Consultant

³ *Id.*

⁴ See Rules of the Supreme Court of Virginia, Rule 4:9(a)(1).

⁵ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

⁶ See Va. Code § 2.2-1001(5).