

Issues: Compliance/Grievance Procedure/Documents; Ruling Date: October 21, 2005;  
Ruling #2006-1172; Agency: Department of Juvenile Justice: Outcome: agency in  
compliance



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

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Juvenile Justice  
Ruling No. 2006-1172  
October 21, 2005

The grievant has requested a compliance ruling in her September 16, 2005 grievances against the Department of Juvenile Justice (DJJ or the agency). She asserts that the agency has not timely replied to her requests for documents relating to her grievances.

FACTS

On or about September 16, 2005, the grievant initiated two grievances challenging two written notices and her termination. In addition, she made a written request to the agency head for documents relating to the disciplinary actions and the related grievances. Her request specifically invoked the Virginia Freedom of Information Act (FOIA) as its basis, although the grievant also advised the agency that she “would like for [the agency] to consider this notice as a request for documents and materials under the grievance procedure.”

Subsequently, by letter dated September 28, 2005, the grievant advised the agency head that while she had received a portion of the documents requested, several specific documents had not been produced by the agency. This letter again specifically invoked FOIA as the statutory authority under which the grievant made her request for documents, although without any reference to the grievance procedure. The agency’s public information office responded by letter dated October 7, 2005, advising the grievant that her request for information was “under review.”

By letter dated October 10, 2005, the grievant requested a ruling from this Department “concerning the [agency’s] noncompliance with 2 FOIA (Freedom of Information Act) requests.” The grievant alleges that by not complying with her FOIA requests, the agency has failed to comply with the grievance procedure.

The agency subsequently advised the grievant, by letter dated October 18, 2005, that it was providing her with several of the documents she had specifically requested in

her September 28<sup>th</sup> letter, and that other documents would be provided when they became available. On October 20, 2005, the grievant wrote to this Department to “follow up” on her previous ruling request. The grievant alleges that the agency’s October 18<sup>th</sup> response was “inadequate.”

### DISCUSSION

This Department has no authority to enforce the provisions of the Virginia Freedom of Information Act. Rather, a person denied the rights and privileges conferred by FOIA must seek enforcement of FOIA’s provisions in a court of law.<sup>1</sup> Accordingly, we will not address the grievant’s claim that the agency has failed to comply with FOIA in this ruling. However, in addition to the rights conferred by FOIA, 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>2</sup> Thus, notwithstanding any rights a grievant may have under FOIA, under the grievance procedure, a grievant may request and be entitled to receive documents related to a pending grievance.

The grievance procedure requires both parties to address procedural noncompliance issues -- such as the document issues presented here -- through a specific process.<sup>3</sup> That process assures that the parties first communicate with each other about the purported noncompliance, and resolve any compliance problems voluntarily without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance. If the party fails to correct the alleged noncompliance, the other party may request a ruling from EDR. Should EDR find that the agency violated a substantial procedural requirement, EDR may render a decision against the noncomplying party on any qualifiable issue, unless the noncomplying party can establish just cause for its noncompliance; rendering such a decision is reserved for the most egregious of circumstances. For instance, if a party ignores a previous compliance order from EDR, a ruling in favor of the opposing party may be granted.

In this case, the grievant provided written notice to the agency head on September 28, 2005 that she considered the agency to be out of compliance with FOIA. This written notice did not, however, expressly advise the agency that the grievant considered it to be out of compliance with the grievance procedure.<sup>4</sup> As a written notice of noncompliance

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<sup>1</sup> See Va. Code § 2.2-3713(B).

<sup>2</sup> Va. Code § 2.2-3003 (E). 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.

<sup>3</sup> See *Grievance Procedure Manual* § 6.3.

<sup>4</sup> Although the grievant characterizes her document requests as being made under FOIA, we believe that her September 16<sup>th</sup> and September 28<sup>th</sup> document requests may also be fairly construed as requests for documents under the grievance procedure. In particular, we note that in her September 16<sup>th</sup> correspondence, the grievant specifically asked the agency to consider the letter as a request for documents under the grievance procedure. Moreover, although her September 28<sup>th</sup> letter did not specifically advise the agency of alleged non-

with the grievance procedure is a prerequisite to a compliance ruling, this Department finds the grievant's request for a ruling in this matter to be premature.

To the extent the grievant continues to object to any alleged failure by the agency to produce documents in accordance with the grievance procedure, she is advised that she must first raise her objections to the agency head in writing. If the agency thereafter fails to respond in a manner consistent with § 6.3 of the *Grievance Procedure Manual*, the grievant may subsequently request a compliance ruling from this Department.

This Department's rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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compliance under the grievance procedure, the grievant indicated that she considers the documents requested in that letter to fall within the scope of her September 16<sup>th</sup> document request.

<sup>5</sup> See Va. Code § 2.2-1001(5).