

Issue: Qualification/Management Actions/record disclosure/confidentiality; Ruling Date: February 8, 2006; Ruling #2006-1247; Agency: Department of Corrections; Outcome: not qualified



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

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections  
Ruling Number 2006-1247  
February 8, 2006

The grievant has requested a ruling on whether her July 25, 2005 grievance with the Department of Corrections (DOC or the agency) qualifies for hearing. The grievant alleges that the agency misapplied Department of Human Resource Management (DHRM) Policy 6.05, "Personnel Records Disclosure."<sup>1</sup> For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed with DOC as a Registered Nurse Clinician B. She alleges that she learned on July 21, 2005 that an inmate had a copy of her Employee Work Profile in his possession, which contained her social security number. The agency admits that it provided this document to the Office of the Attorney General (OAG) and that the OAG erroneously produced the EWP in an unredacted format to the inmate in response to a discovery motion.

On July 25, 2005, the grievant initiated a grievance challenging the agency's conduct. In addition, the grievant has initiated a formal complaint with the OAG.

DISCUSSION

For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.<sup>2</sup> Here, the grievant asserts that the agency's conduct violates DHRM Policy 6.05,

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<sup>1</sup> In her request for a qualification ruling, the grievant also alleges that the agency head's response to her request for qualification was untimely. As the grievant failed to first raise her objection to the agency head, as required by *Grievance Procedure Manual* § 6.3, her request for a compliance ruling is premature. Moreover, because it is undisputed that the grievant has now received the agency's response, the grievant's challenge to any alleged delay by the agency is moot.

<sup>2</sup> A mere misapplication of policy in itself, however, is generally insufficient to qualify for a hearing. The General Assembly has limited issues that may qualify for a hearing to those that involve "adverse employment actions." Va. Code § 2.2-3004(A). An adverse employment action is defined as a "tangible employment act constituting a significant change in employment status, such as hiring, firing, failing to

“Personnel Records Disclosure.” She argues that the agency acted improperly in providing the unredacted EWP to the OAG and should be held accountable for the OAG’s apparent error in providing the unredacted document to an inmate. She also suggests that the agency violated Policy 6.05 when its mailroom employees allowed the materials from the OAG containing her social security number to go to the inmate.

As the grievant notes, Policy 6.05 generally prohibits an agency from disclosing an employee’s social security number without the employee’s written consent.<sup>3</sup> However, that policy also provides that agencies must comply with subpoenas regarding employee records and may do so without first informing the subject employee.<sup>4</sup> Moreover, under Policy 6.05, where a court requests but does not order employee files, copies of the requests and files should be immediately forwarded by the agency to the OAG, which will in turn respond to the document request. Thus, Policy 6.05 recognizes that where disclosure is required by a judicial process, an agency is required to produce employee records which would otherwise be protected. That policy also acknowledges the unique role the OAG plays as agency counsel and directs agencies to produce employee records to the OAG for review and production without also mandating that agencies first redact personal employee information.

In the course of this Department’s investigation, we requested informal clarification from DHRM on the application of Policy 6.05 to the facts presented in this matter. DHRM has advised this Department that DOC was not prohibited under Policy 6.05 from providing the grievant’s unredacted EWP to its legal counsel, OAG, and that the subsequent erroneous disclosure by OAG of the grievant’s social security number does not constitute a misapplication of Policy 6.05 by DOC. While we appreciate the grievant’s concerns regarding the disclosure of her social security number, because DHRM, the agency charged with promulgation and interpretation of state policy, has reviewed the facts of this case and found no misapplication of that policy, this Department must deny qualification on this issue.<sup>5</sup>

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promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.” *Von Gunten v. Maryland Department of the Environment*, 243 F.3d 858, 866 (4<sup>th</sup> Cir 2001)(citing *Munday v. Waste Management of North America, Inc.*, 126 F.3d 239, 243 (4<sup>th</sup> Cir. 1997)). For the purposes of this ruling, we will assume the conduct challenged by the grievant constitutes an adverse employment action.

<sup>3</sup> Policy 6.05, “Personnel Records Disclosure,” at § III.B (effective 9/16/93; updated 7/1/05). We note that the underlying disclosures appear to have occurred prior to the 7/1/05 update of Policy 6.05. However, a comparison of Policy 6.05 in its 9/16/93 and 7/1/05 forms indicates that the relevant portions remain identical.

<sup>4</sup> *Id.* at § V.

<sup>5</sup> Va. Code § 2.2-1201(13) states that DHRM shall “Develop state personnel policies and, after approval by the Governor, disseminate and interpret state personnel policies and procedures to all agencies.” Section 2.2-1201(13) further states that “The [DHRM] Director of the Department shall have the final authority to establish and interpret personnel policies and procedures and shall have the authority to ensure full compliance with such policies.” *See also Murray v. Stokes*, 237 Va. 653; 378 S.E.2d 834 (1989). We note that the grievant has not alleged or presented evidence which would show an unfair application of Policy 6.05.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the qualification determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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Claudia T. Farr  
Director

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