

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: July 28, 2009;
Ruling #2007-1494; Agency: Department of Social Services; Outcome: Agency In
Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Social Services
Ruling Number 2007-1494
July 28, 2009

The grievant has requested a compliance ruling from this Department. The grievant claims that her former employer, the Department of Social Services (DSS or the agency), has failed to provide her with requested documents related to her June 7, 2006 grievance.

FACTS

On June 7, 2006, the grievant initiated a grievance challenging her “pay, job categorization, level, and job duties under the new Human Capital Plan.” As relief, the grievant asked “to be provided [a] clear, concise, and understandable explanation and documentation of how the policies, procedures, and practices of the Human Capital plan were properly and fairly applied to [the grievant].” At the time she initiated her grievance, the grievant was employed by the agency as a Project Manager.

The first-step respondent provided the grievant with a several-page response to the issues raised by the grievant. In advancing her grievance to the second step, the grievant expressed her concern that her “situation may not have been correctly handled.” In addition, the grievant provided the agency with a list of requested information. This list was composed of requests for documents, as well as a number of questions the grievant asked the agency to answer.

On July 27, 2006, the agency responded to the grievant’s request with a several-page written document, which addressed each of the items requested by the grievant. The grievant was not satisfied with the agency’s response, and she continued to assert that she had not received all requested information.

After the agency still did not provide information to the grievant’s satisfaction, she requested a compliance ruling from this Department. Following the grievant’s request, the parties continued to work to resolve the pending compliance issues. Although the agency provided the grievant with additional information, she asserts that the agency has not been fully compliant. The agency denies the grievant’s allegations of noncompliance.

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 the actions grieved shall be made available upon request from a party to the grievance, by the opposing party.”¹ 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 grievance statute further 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.”² Documents, as defined by the Rules of the Supreme Court of Virginia, include “writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.”³ While a party is not required to create a document if the document does not exist,⁴ parties may mutually agree to allow for disclosure of relevant non-privileged information in an alternative form that still protects the privacy interests of third parties, such as a chart or table, in lieu of production of original redacted documents. To summarize, absent just cause, a party must provide the other party with all relevant documents upon request, in a manner that preserves the privacy of other individuals.

This Department has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner.

Here, the grievant asserts that after extensive interaction between the parties, the agency has yet to provide the following documents: (1) “[c]ompetency matrices completed as of April 2006 for all IT management positions and all managers,” (2) “[f]ull copies of the job titles, roles, and responsibilities of all IT management positions for the HR Capital Plan as those documents existed in February 2006 and April 2006,” (3) “[c]opies of all EWP’s from October 2006 and April 2006 for all IT management positions and all IT managers, without redaction of job titles, including for those managers and positions not named by [the grievant],” (4) “[a] full and unredacted copy of the HR Compensation Study done for the 2006 HR Capital Plan, as it existed in February 2006 and April 2006,” (5) “[a]ccess to full and unredacted copies of the 2004 and 2005 Gartner Salary surveys,” and “an explanation of why the HR Compensation Study allegedly refers to the 2005 Gartner Salary Study but the 2004 numbers were apparently used in the calculations,” (6) “[t]he EWP Phased deliverables for all IT management positions, as that document existed in February 2006 and April 2006,” and (7) “[a] written response to questions 4,

¹ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

² *Id.*

³ Rules of the Supreme Court of Virginia, Rule 4:9(a)(1).

⁴ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

6, 7, and 8 in [the grievant's] second-step grievance request dated 6/23/06." Each of these issues will be addressed below.

1. Competency Matrices

The grievant asserts that while the agency has provided some competency matrices, others still are missing. The agency states that the grievant has already been provided with the requested EWP's, and the matrices were attached to them. The agency further states that because the grievant "is alleging that there are some EWPs not provided, [the agency] need[s] her to provide [the agency] with a listing of those still needed." The grievant has declined to provide such a list.

The grievant's claim that the agency has withheld documents appears to be based on her belief that "[i]nclusion of competency matrices was a required step in the Human Capital Plan slotting process." Assuming, for the purposes of this ruling, that the grievant is correct that inclusion of the requested matrices was a required step in the slotting process, that does not necessarily mean that the agency has failed to provide documents: in other words, simply because a policy required documents to be created does not mean that the documents were in fact created. Where an agency does not create requested documents, the agency's failure does not constitute non-compliance with the grievance procedure, because the agency's only duty under the grievance procedure is to produce *existing* documents. Any such failure, however, could be cited by the grievant with respect to her substantive claims that the agency failed to follow appropriate policies and procedures.

Here, the agency asserts that it has provided the grievant with the requested documents. The grievant has not informed the agency which matrices she believes were not provided. Accordingly, based on the information before us, we cannot conclude that the agency was noncompliant. If the grievant provides the agency with a list of purportedly missing matrices, the agency shall respond to that request within 5 workdays of receipt and should either provide any remaining matrices, or inform the grievant that they do not exist.

2. Full copies of the job titles, roles, and responsibilities of all IT management

The grievant also asserts that the agency has failed to provide her with full copies of the job titles, roles, and responsibilities of all IT management positions for the HR Capital Plan as those documents existed in February 2006 and April 2006. The agency states that the grievant has already "been provided full copies of the EWPs for the IT management positions for the HR Capital Plan. The EWPs have an effective date of November 2005 and a revised date of April 2006. There are no EWPs with an effective or revision date of February 2006."

The grievant concedes that "[o]n March 21, 2007, HR provided additional EWPs for some (but not necessarily all) IT management." She argues, however, that she does not know if she has all the management EWPs and she objects to the agency's request that she provide the names of those IT personnel whom she considers to be IT managers. She notes that the agency

has not “published” a list of IT managers; on the other hand, however, she concedes she has never asked the agency for such a listing.

Under these circumstances, we cannot find that the agency has failed to comply in producing requested documents. First, we note that the grievant herself is not certain if there are any management EWPs which she has not received: indeed, she concedes that she does not know whether she has all management EWPs. Further, with respect to the agency’s request that the grievant identify those additional individuals for whom she seeks information, such a request makes sense given the parties’ apparent disagreement about which EWPs fall within the scope of the grievant’s request.

3. Copies of all EWPs from October 2006 and April 2006 for all IT management positions and all IT managers, without redaction of job titles

The grievant also argues that the agency failed to comply with the grievance procedure by redacting “job titles” from the EWPs produced. She asserts that without the job titles, she is unable to “match roles and responsibilities to job titles.” The grievant states that the agency agreed to provide her with the EWPs in response to two of her initial document requests: (1) “[t]he list of skills for the Technical Program Managers and other IT managerial positions since it appears that [the grievant’s] duties [] were a better fit at that level,” and (2) “[t]he skills and pay ranges for all IT management titles on [two dates].” The agency asserts that the grievant has been provided with the agreed-upon EWPs, and that the redactions were necessary to protect personally identifiable information.

As previously explained, the grievance statute provides 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.”⁵ Third-party names, home addresses, personal telephone numbers, position numbers and social security numbers are clearly personally identifiable features that generally must be removed from documents prior to their release. In some cases it may also be necessary to remove additional information, including, but not limited to, references to gender, geographic location, and job title.⁶ In determining the appropriate scope of redactions, this Department must strive to give effect to both the disclosure and the privacy interests reflected in the grievance statute.

In this case, the agency removed names, position numbers and “work titles” from the EWPs produced to the grievant. Role Titles and Codes, SOC Titles and Codes, Occupational Family and Career Groups, and Pay Bands were not redacted. Further, in some EWPs, while the work title was redacted from the first page of the EWP, other sections of the EWP containing work title information were not redacted.

The grievant asserts that she needs the work titles and position numbers to be able to identify “the actual pay levels in the salary structure.” The salary structure to which the grievant

⁵ *Id.*

⁶ *See e.g.*, EDR Ruling No. 2004-704.

refers is a document entitled “[Division] Salary Structure 2006,” which was apparently produced by the agency to the grievant. This document identifies the minimum, middle, and maximum compensation range for DSS positions. The positions are identified not only by work title, but also by role code and role title.

While we agree with the grievant that it would be easier for her to “match” positions if work titles and position numbers had not been redacted, we cannot agree that she has been given too little information to be able to correlate salary ranges with positions, particularly in light of the grievant’s initial requests. The EWP’s give extensive information about the positions at issue, including the position’s purpose, the required KSA’s, competencies, education and experience, and the responsibilities of the position. In addition, the EWP’s provide the grievant with each position’s role code and role title, two identifiers on the Salary Structure document. Accordingly, balancing the competing privacy and disclosure interests, this Department concludes that, under the circumstances present in this case, the redactions made by the agency do not constitute non-compliance with the grievance procedure.

4. Full and Unredacted Copy of the HR Compensation Study

The grievant also asserts that the agency has failed to provide her with a full and unredacted copy of the HR Compensation Study done for the 2006 HR Capital Plan, as that document existed in February 2006 and April 2006. The agency responds that it has made an unredacted copy available for the grievant’s review on repeated occasions, and that it would provide the grievant her own copy if she were to agree to pay the copying costs.

The grievant appears to concede that she has been provided access to the Compensation Study, but she asserts that information “related to” the Study has been “swapped, replaced, omitted, or otherwise handled in a way that obstructs resolution of [her] grievance.” To substantiate this allegation, the grievant claims that the agency removed a copy of the “[Division recommendation vs. finalized alignment summary” and changed the binder cover of the study to March 2006, removing the January cover. In an e-mail dated December 14, 2006, however, the grievant admitted that she was provided with a copy of the missing recommendation document. Under these circumstances, and in the absence of any other evidence to support the grievant’s allegations, we cannot find that the agency has failed to comply with the grievant’s request regarding the HR Compensation Study.

5. Access to Full and Unredacted Copies of the 2004 and 2005 Gartner Salary Surveys

The grievant also alleges that she has not been provided with access to full and unredacted copies of the 2004 and 2005 Gartner Salary surveys. The agency states that she has had full access to these documents. As the grievant has not produced any evidence to dispute the agency’s position, and, indeed has admitted receiving copies of the two studies in communications with this Department, we cannot find that the agency has failed to comply with the grievance procedure by denying the grievant access to these studies.

The grievant has also asked the agency to provide an explanation of an alleged discrepancy between the HR Compensation Study and the Gartner Salary surveys. As previously noted, however, a party is under no obligation to create a document in response to a document request under the grievance procedure. Moreover, while parties have rights to existing documents under the grievance procedure, the grievance procedure does not authorize a means through which one party can pose written questions to the other.

6. EWP Phased Deliverable Maps for all IT management positions, as that document existed in February 2006 and April 2006

The grievant further asserts that the agency failed to provide her with “EWP to Phased Deliverable Maps...with information for IT managers as of February and April 2006.” She states that she did not request this information, but that the agency offered to provide it to her to help her understand roles and responsibilities. The grievant admits that she was provided with a document created by the agency in November 2006 (apparently for the grievant), but she claims that the document did not provide her with adequate information regarding IT management roles and responsibilities.

The agency appears to have been under no duty to produce the EWP Phased Deliverable Map. The document was not requested by the grievant, and it appears to have been created voluntarily by the agency for the grievant’s benefit. Under these circumstances, we cannot find that the agency has failed to comply with the grievance procedure with respect to this document.

7. A Written Response to Questions 4, 6, 7, and 8 in the grievant’s second-step “grievance request”

In conjunction with the second resolution step, the grievant made the following requests, to which she claims she is still owed a response by the agency:

[Request 4] “An explanation of [the] way my specific job was considered for leveling when I was continuing to be asked to do the same duties and responsibilities.”

[Request 6] “Was the concept of leveling specifically discussed and approved with DHRM as part of the Human Capital Plan in April when it was reviewed? If so, I would like [that April presentation, or at least the actual wording of leveling in the Human Capital presentation given to them.”

[Request 7] “Were all IT staff who received raises in the past few months in IT Project Management and other IT manager positions raised no higher than their new bottom salary level? If not, why were some raised to levels higher than the new bottom salary level and what were the rules used to make those determinations?”

[Request 8] “How many people in IT management and supervisory positions were ‘leveled’ instead of having their jobs evaluated on skill and duties accomplished?”

With the exception of the grievant's request, in Request 6, for a copy of the alleged April presentation to DHRM, the information sought by the grievant is more in the nature of an interrogatory than a document request, as her requests call upon the agency to respond to the questions she poses. The grievant concedes that the agency has responded verbally to her requests for information in Requests 4, 6, 7, and 8, but she asks that the agency set forth those denials in writing. The agency responds that it has, in fact, responded in writing to those requests. Because the written denial sought by the grievant would be more than is required under the grievance procedure, we cannot find that the agency is in noncompliance.

With respect to the April presentation, the agency has apparently provided the grievant with the requested PowerPoint presentation, as well as "sample beginner, intermediate, advanced and expert BA EWPs, Executive Summary, [and] salary ranges." The grievant does not appear to dispute that she has received the requested documents related to the April presentation. Accordingly, we find the agency is in compliance with the grievance procedure with respect to this request.

This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁷ See Va. Code §§ 2.2-1001(5) and 2.2-3003(G).