

Issue: Compliance/grievance procedure/documents; discipline/failure to follow instructions; Ruling Date: September 12, 2006; Ruling #2007-1437; Agency: Department of Mental Health, Mental Retardation and Substance Abuse Services; Outcome: grievant not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Mental Health, Mental Retardation
and Substance Abuse Services
Ruling No. 2007-1437
September 12, 2006

The grievant seeks a compliance ruling against his employer, the Department of Mental Health, Mental Retardation and Substance Abuse Services (or the agency). He states that the agency has improperly withheld documents that he requested under the grievance procedure.

The grievance procedure requires that the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.¹ Where a grievant asserts that the agency is noncompliant, the grievant must notify the agency head of the noncompliance.² If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director.³

In this case, the grievant notified the facility director, rather than the agency head (Commissioner), of the alleged noncompliance; thus this ruling request is premature. Assuming that the grievant has still not received the requested documents, he must notify the agency head, in writing, of the alleged noncompliance. If it is not corrected within five days of receipt of the notice, the grievant may then request, in writing, a compliance ruling from this Department.

We note that 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.”⁴ This Department’s interpretation of the mandatory language “shall

¹ *Grievance Procedure Manual*, § 6.3.

² *Id.*

³ *Id.*

⁴ Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2. “Just cause” is defined as “a reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9. Examples of “just cause” include, but are not limited to, (1) the documents do not

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.”⁵ In addition, this Department has held in prior rulings and explains that in the *Frequently Asked Questions* section of our website, document requests are no longer associated with the FOIA and that Act alone cannot be used as the reason for refusing to produce documents.⁶ Likewise, this Department has held that the Department of Human Resource Management (DHRM) Policy 6.05 personnel document disclosure provision is overridden by the statutory mandate requiring parties to a grievance proceeding to produce relevant documents.⁷ Finally, we have noted that the 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.⁸

Claudia T. Farr
Director

exist, (2) the production of these documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.

⁵ *Id.* Documents, as defined by the Rules of the Supreme Court of Virginia, include “writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.” *See* Rules of the Supreme Court of Virginia, Rule 4:9(a)(1).

⁶ *See* EDR Ruling Nos. 2006-1312, 2004-629, and 2004-634; *see also* <http://www.edr.virginia.gov/faqs.htm>.

⁷ *See* EDR Ruling Nos. 2006-1199, and 2004-853; Cf. EDR Ruling No. 2004-683 (an agency may not deny a grievant access to otherwise relevant documents relating to a selection process on the ground that such disclosure is prohibited by DHRM Policy No. 2.10, Hiring).

⁸ EDR Ruling No. 2006-1312.