

Issue: Compliance – Grievance Procedure (documents); Ruling Date: November 30, 2007; Ruling #2008-1865; Agency: Department of Conservation and Recreation; Outcome: Agency Not in Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Conservation and Recreation  
Ruling No. 2008-1865  
November 30, 2007

The grievant has asked for a compliance ruling from this Department. She alleges that the Department of Conservation and Recreation (the agency) failed to comply with the grievance procedure by not providing requested documents.

FACTS

The grievant filed a grievance to challenge her “transfer and demotion” and alleged gender discrimination. A portion of the second resolution step response states that the grievant’s supervisor had received three complaints about the grievant’s performance. The grievant requested any such “comments and/or complaints received about [the grievant]” among other documents. The agency provided three written complaints purportedly made by two regional managers and a central office staff member. However, the agency substantially redacted these documents before providing them to the grievant. Large portions of the text were covered, along with the identity of the individuals who wrote the documents and the dates. The agency states that these complaints were never acted upon and played no part in the actions grieved by the grievant. The grievant has now requested this ruling, asserting that the agency redacted too much information from the documents. The grievant also alleges that she requested that the agency provide a listing of the names of the people who were asked to provide negative comments about her. The agency has not provided this information on the basis that a document does not already exist detailing this information.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department’s involvement. Specifically, the party

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<sup>1</sup> *Grievance Procedure Manual* § 6.

claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> If the party fails to correct the alleged noncompliance, the complaining party may request a ruling from this Department.<sup>3</sup> In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that she first notified the agency head in writing of the alleged violations, as required by the grievance procedure.<sup>4</sup> Instead, the grievant notified the Director of Human Resources.

Because the grievant has not first notified the agency head of the alleged non-compliance and given the agency five workdays to correct the purported non-compliance, a ruling from this Department regarding the documents would be premature. If the grievant wishes to pursue this matter, she should provide a notice of noncompliance to the agency head, and allow the agency five workdays to correct the alleged problems.<sup>5</sup> If the grievant remains dissatisfied with the agency's response after she has informed the agency head of the purported noncompliance and allowed five workdays for correction, she may seek a ruling request from this Department.

This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> *Grievance Procedure Manual* § 6.3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *See id.* The grievant also has the option of demanding, in writing to the agency's Human Resources Office, that the grievance process temporarily halt until the documents are provided. *See Grievance Procedure Manual* § 8.2.

<sup>6</sup> Va. Code § 2.2-3003(G).