

Issue: Compliance – Grievance Procedure (documents); Ruling Date: April 22, 2008; Ruling #2008-2001; Agency: Department of Corrections; Outcome: No Ruling – to be addressed with Hearing Officer.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2008-2001
April 22, 2008

The grievant requests a compliance ruling from this Department regarding the grievance he initiated with the Department of Corrections (DOC or the agency) on February 25, 2008. The grievant claims that management has failed to respond to his request for documents and information relative to his grievance.

FACTS

The grievant is employed as a Psychology Associate with DOC. On February 12, 2008, the grievant was issued a Group II Written Notice for the unauthorized use of state property and a Group II Written Notice with transfer and demotion for failure to follow policy. The grievant challenged the disciplinary actions by initiating a grievance on February 25, 2008. In the relief section attached to his February 25th grievance, the grievant requests various documents and/or information allegedly relevant to his grievance. Unsatisfied with the agency's response to his request for documents, the grievant sent a letter of noncompliance to the agency head on March 17, 2008. In response to the grievant's notice of noncompliance, on March 24, 2008, the agency sent the grievant a letter indicating that it has provided the grievant with all the documents he can expect to receive. As such, the grievant seeks a compliance ruling from this Department on whether the agency has failed to comply with the grievance procedure. The grievant presented his compliance ruling request to this Department on March 28, 2008, four days after this Department received the request for appointment of a hearing officer to preside over the adjudication of this grievance. A hearing officer has not yet been appointed pending the outcome of this Department's compliance ruling.

DISCUSSION

In a case such as this where the agency's request for the appointment of a hearing officer was received in advance of the grievant's compliance ruling request, it makes little sense to halt the grievance process so that EDR can sort out the document production dispute. At this late stage in the grievance process, the *only* purpose for which the requested documents have any bearing is the grievance hearing. Moreover, the hearing officer who will preside over the hearing will be called upon to make relevancy determinations on *all* evidence presented at hearing. For both the hearing officer and this Department to rule on the document issues *at this stage in the grievance process* would be redundant and an inefficient use of state resources. Thus, allowing the hearing officer to make the determination of whether a particular document should be produced, once the grievance has been qualified, is simply a matter of administrative efficiency.¹

Accordingly, all remaining disputes relating to the production of documents should be presented to the hearing officer once appointed for his determination. If either party to this grievance later believes that the hearing officer exceeded his authority or failed to comply with the grievance procedure by ordering or failing to order the production of specific documents, that party may then request a compliance ruling from this Department.

The parties are advised to contact the hearing officer prior to the scheduled hearing date to request and discuss the production of documents in this matter. This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

¹ If the grievance were still at the resolution steps stage of the grievance process or even at the agency head's qualification stage, the grievance process would have halted as the requested documents may have had some bearing on an agency respondent's response or the agency head's determination. Because this grievance has proceeded through all resolution steps and was qualified prior to the compliance ruling request, the requested documents could have no bearing on any agency management action. Therefore, there is no reason to stop the grievance process. We note also that §8.2 of the *Grievance Procedure Manual* states that if documents are denied prior to the appointment of a hearing officer, the requesting party *may* seek relief from this Department. This provision is intended to provide general guidance to parties as to whom they should direct their request for relief. This provision does *not* divest from this Department the discretion to pass to the hearing officer the initial determination of document relevancy when, as in this case, the grievance has passed through each of the resolution steps and has been qualified for hearing.

² See Va. Code § 2.2-1001(5).