

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: November 17, 2009; Ruling #2010-2462; Agency: Department of Juvenile Justice; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling No. 2010-2462
November 17, 2009

The grievant has requested a ruling regarding the alleged noncompliance of the Department of Juvenile Justice (the agency) in not providing requested documents.

FACTS

The grievant's September 28, 2009 grievance concerns a Written Notice she received for having been convicted of a criminal offense. The grievant has requested documents from the agency regarding two former agency employees who were also allegedly convicted of a similar criminal offense. The agency has searched the files of the two former employees and has found nothing regarding such convictions. However, during this Department's investigation for this ruling, the agency discovered information about a relevant conviction in a background file on one of the former employees. The agency states it has sent copies of the documents to the grievant. In addition to the two former employees, the grievant also states that a current employee of the agency has a similar conviction, and seeks documents regarding that employee, as well.

DISCUSSION

The grievance statutes provide 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. "Just cause" is defined as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process."² For purposes of document production, examples of "just cause" include, but are not limited to, (1)

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

² *Grievance Procedure Manual* § 9.

the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.³

The documents regarding the conviction of one of the former employees recently discovered by the agency appear responsive to the grievant's request as to that one individual. As such, those documents must be provided to the extent they have not been already.⁴

The agency has stated that it conducted a search of the other former employee's files and found no documents regarding the alleged conviction. There is no evidence that the agency is withholding any further responsive documents. In light of this lack of evidence, this Department cannot conclude that the agency has failed to comply with the grievance procedure for not producing documents it does not have in its custody or control. Although the agency may not have initially found and produced the documents regarding the one former employee, because the agency has or will produce the recently discovered documents, it has come into compliance with the grievance procedure. There is no basis to order relief at this time.

In addition, with regard to the grievant's statement that there may be similar conviction-related documents related to a current agency employee, it does not appear that the grievant had requested such documents from the agency prior to this ruling request. All the responses to her document request indicate that she was only seeking information regarding the two former employees. The grievant also admits that she did not raise the issue of the current employee earlier. If the grievant wishes to obtain documents regarding the current employee, if such documents exist, she should request them from the agency.⁵ Because there is no pending request for these documents, there is no basis for this Department to find that the agency has failed to comply with the grievance procedure.

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

³ See, e.g., EDR Ruling No. 2008-1935, 2008-1936; EDR Ruling No. 2001QQ.

⁴ The parties are reminded that the grievance statutes further state 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." Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

⁵ See *id.*

⁶ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).