

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: May 12, 2010;
Ruling #2010-2620; Agency: Department of State Police; Outcome: Agency in
Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of Department of State Police
Ruling Number 2010-2620
May 12, 2010

The grievant has requested that this Department reconsider EDR Ruling No. 2010-2575 (“prior ruling”), which addressed allegations of noncompliance with the grievance procedure by the Department of State Police (the agency) in failing to produce requested documents. In the prior ruling, the EDR Director ordered the agency to produce certain documents about the selection process at issue, which it appears to have done. The agency was required to produce documents pertaining to the successful candidate and not all other candidates.¹ Based on alleged errors in the screening process, the grievant seeks to obtain information about other applicants in the selection process.

The grievant argues that the alleged screening errors could indicate preferential treatment of the successful candidate at screening. For instance, it appears that she is asserting that the successful candidate’s ratings at screening may have been higher than her knowledge, skills, and abilities supported. She states that she needs to be able to review the materials of other applicants to determine if errors occurred at that stage, which, she asserts, could affect the entire selection. The grievant also appears to argue that if other candidates outweighed the successful candidate at screening, it could indicate preferential treatment.

If the successful candidate received preferential treatment at screening, it could support the grievant’s arguments of preselection of that successful candidate later in the process. To properly determine whether such preferential screening occurred, the materials for other candidates could be relevant. Differences in how knowledge, skills, and abilities were rated between other candidates and the successful candidate could indicate the preferential treatment the grievant argues occurred. For instance, if the documents showed that the successful candidate was assessed at a higher level for a particular qualification when another candidate was rated lower based on similar experience, such evidence could suggest, though by no means determinative, preferential treatment.

While this Department has reviewed no evidence indicating that there were screening errors, at this early stage, we cannot determine that the materials of other candidates in the

¹ EDR Ruling No. 2010-2575.

selection are entirely irrelevant.² Further, as discussed in the prior ruling, the confidentiality interests embodied in policy can still be maintained by redacting non-relevant personal information from the selection documents (such as the candidate's name, social security number, telephone number, and address).³ Therefore, the agency must provide materials for the other candidates in the selection process.

This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

² Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue. *See Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) ("We have recently defined as relevant 'every fact, however remote or insignificant that tends to establish the probability or improbability of a fact in issue.'" (citations omitted)); *Morris v. Commonwealth*, 14 Va. App. 283, 286, 416 S.E.2d 462, 463 (1992) ("Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue." (citations omitted)).

³ Va. Code § 2.2-3003(E) ("Documents pertaining to nonparties ... shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance."); *Grievance Procedure Manual* § 8.2 (same). The just cause analysis discussed in the prior ruling is equally applicable here. *See* EDR Ruling No. 2010-2575.

⁴ *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).