

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: July 9, 2010;  
Ruling #2010-2684; Agency: Department of State Police; Outcome: Agency In  
Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of State Police  
Ruling Number 2010-2684  
July 9, 2010

The grievant has requested a ruling regarding the alleged noncompliance with the grievance procedure of the Department of State Police (the agency) in failing to produce requested documents.

FACTS

In her March 4, 2010 grievance, the grievant has challenged the agency's determinations in a competitive selection process.<sup>1</sup> In this grievance, the grievant has requested and the agency has provided various documents. The grievant again states that the agency has failed to produce documents she seeks.

During this Department's investigation for this ruling, the grievant was asked what documents she is still seeking. She primarily stated that she believes that there should be notes and/or correspondence by or between the interview panel members and those involved in the selection. The agency was asked whether there are additional documents that the agency has withheld. The agency states that it has provided all such documents and that both the selection file has been reviewed and the panel members have been asked about any other documents they may have. No further documents appear to exist.

The grievant also states that the agency has failed to provide responses to certain document requests and explanations for why certain documents have not been provided. For instance, the grievant requested answers to certain questions in "Section B" of one of her letters to the agency, dated April 21, 2010. The agency responded to her questions on May 14, 2010, providing various responses. The grievant states the agency has not complied with the grievance procedure in its response. As such, she seeks another compliance ruling from this Department.

DISCUSSION

This Department has reviewed the materials submitted by the parties and conducted its investigation into these allegations of noncompliance and finds that the agency has complied with the grievance procedure. The additional documents the grievant states the agency has either

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<sup>1</sup> See EDR Ruling No. 2010-2575.

not provided or not explained why they have not provided do not exist. This Department has found no indication that there are additional notes or correspondence in the possession of the agency about this selection that have not been provided to the grievant.<sup>2</sup> Because a party “shall not be required to create a document if the document does not exist,”<sup>3</sup> the agency has not failed to comply with the grievance procedure.

Further, upon reviewing the grievants “Section B” requests of April 21, 2010 and the agency’s responses, there does not appear to be any indication of noncompliance with the grievance procedure. Indeed, the agency appears to have provided answers to the grievant’s questions.<sup>4</sup> However, although the agency cited to the relevant DHRM Policy, if there are any written agency policies that are relevant and applicable to the grievant’s document requests about the selection process, those policies must be given to or referenced for the grievant, if she can otherwise obtain them herself, for instance, online.

This Department’s rulings on matters of compliance are final and nonappealable.<sup>5</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> Further, to the extent the grievant states she has not received a cover letter and resume for one of the candidates, the agency has stated there are no additional documents. *See supra*. Therefore, there is apparently no resume and cover letter for this individual. It is possible that the candidate did not submit a cover letter and resume.

<sup>3</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

<sup>4</sup> The limited discovery permitted under the grievance procedure does not include written interrogatories.

<sup>5</sup> *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).