

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: July 16, 2010;  
Ruling # 2010-2689, 2010-2690; Agency: Department of Social Services; Outcome:  
Agency In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Social Services  
Ruling Nos. 2010-2689, 2010-2690  
July 16, 2010

In e-mails dated June 24, 2010, the grievants requested this Department (EDR) to reconsider Ruling Numbers 2010-2628, 2010-2629, which addressed the grievants' various allegations of noncompliance by the Department of Social Services (the agency) regarding the production of documents.

The grievants' requests have been reviewed and we conclude that there are no grounds for which reconsideration of EDR's compliance ruling is appropriate. The issues raised by the grievants in their June 24, 2010 e-mails have already been considered in the previous compliance ruling. The grievants have submitted nothing that would alter the determinations in that ruling. Further discussion about a few issues raised is appropriate, however.

The grievants argue that they are being charged for the agency to correct its "botched" first search. They assert that they were not charged for the first search and, therefore, should not be charged for the agency's attempts to fix the problems with that first search. While we understand the grievants' arguments, they do not change the outcome here. The agency has not waived its ability to charge the grievants for this search by having processed the first search without charging them. Rather, matters have changed since that first search was done. The new search involves a different time frame and additional search terms. These differences make the decision to charge the grievants for the new search understandable because of the greater effort required than during the original search. Although the grievants should not be charged for duplication of documents they already received in the first search, the agency may still properly charge for this new search given the additional effort involved.

In their e-mails, the grievants also assume that agency employees have deleted documents and e-mails and the only way to recover these files, or remnants thereof, is to access and review back-up drives. While we cannot disagree that it is always possible that documents could have been deleted, here there is no credible evidence that any relevant electronic files in fact have been deleted. The determinations made in the prior compliance ruling are not affected by the grievant's argument.

EDR has balanced the interests of the grievants' need and/or likelihood of discovering additional responsive files against the burden to the agency of undertaking such a search,

including time and cost. We find limited value to reviewing the back-up drives given the low likelihood of discovering any relevant or material documents that would not already be available. Therefore, given the heavy burden such additional searches would cause, there is no reason to require a review of back-up drives in this case. The grievants attempt to argue that their requests for documents are no more extensive than other agency grievants. Even if that were the case, the grievants ignore the fact that their requests are extensive and voluminous. Adding further drives to search to the already large effort for presumably little value is not supported by the balancing of the interests here.

The grievants have also repeated their argument that the agency has not charged other grievants for similar document requests in the past. EDR addressed this argument in Ruling Numbers 2010-2628, 2010-2629 and, in so doing, assumed the grievants' allegations of fact to be true. However, simply because an agency has not charged grievants in the past for document requests does not mean that the agency is forever barred from doing so in the future. The context within which such charges are proposed can be relevant and could potentially indicate retaliation. However, as we found in the prior ruling, there is no such evidence here. Rather, the size and scope of the document collection in this case would reasonably lead an agency to consider charging the requesting grievants. Further, as the grievants have noted, there are new staff members in the human resources department at the agency. This change in management alone could understandably lead to different approaches to these types of situations. In short, whether or not the agency has charged past grievants does not have any impact on this case.

This Department's rulings on matters of compliance are final and nonappealable.<sup>1</sup>

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Claudia T. Farr  
Director

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<sup>1</sup> See Va. Code §§ 2.2-1001(5), 2.2-3003(G).