

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: August 27, 2010; Ruling #2011-2736; 2011-2737; 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. 2011-2736, 2011-2737
August 27, 2010

The grievants have requested that this Department (EDR) again reconsider Ruling Numbers 2010-2628, 2010-2629, in which EDR addressed the grievants' various allegations of noncompliance by the Department of Social Services (the agency) regarding the production of documents. However, except for one issue, the questions presented by the grievants in their ruling requests either could have been presented in earlier requests,¹ and therefore will not be addressed through a second reconsideration ruling now, or seek advisory opinions about issues that have yet to occur. Therefore, the grounds presented are not appropriate for further review by the EDR Director at this time.

The only matter on which further comment will be provided is the grievants' continued disputes regarding the list of 72 search terms. The grievants argue that the agency has not addressed the list with them and they do not understand the full list of search terms. However, the grievants should be aware that the list of 72 terms provided to them by the agency represent the total number of terms that will be searched. These 72 terms, as EDR noted in a prior ruling, were distilled from the more than exhaustive list provided by the grievants. The grievants appear to repeat their claims that the agency has somehow failed to follow EDR's orders by using only the grievants' proposed search terms. However, there is nothing wrong with the agency's approach here.

The list of 72 search terms is exhaustive by any measure. It is likely that any "additional" search terms developed would simply end up duplicating terms on the list of 72 terms. Consequently, it is reasonable to simply use that list. The grievants' continued arguments regarding the need for "additional" terms are invalid. Further, there is no independent duty for the agency to have developed their own list of terms here, as long as the list used for the renewed

¹ For instance, the grievants have submitted allegations of assumed document destruction by the agency because a high level agency manager left the agency in February 2010. It is presumed that the agency has taken appropriate steps to preserve relevant documentation to be discovered during this document collection and production. If the agency has failed to do so, it could lead to an adverse inference being taken against the agency or such other action as may be appropriate. *See, e.g.,* Va. Code § 2.2-3003(G). However, even considering the grievants' statements, this Department sees no reason for the parties to undergo the time and effort required of retrieving information from back-up drives/tapes. *See* EDR Ruling Nos. 2010-2689, 2010-2690. Questions about alleged document destruction and/or spoliation are more properly determined at a later time.

search (if it goes forward) is suitably comprehensive to capture the relevant documents, however that list might be created. The list of 72 terms appears to meet this goal and it is perfectly appropriate for the agency to simply use that list.

Because they have been provided the list of 72 terms, the grievants have sufficient information to suggest or further refine the list of terms, which the agency has invited them to do. Without further suggestions from the grievants to refine or eliminate terms, we do not see any problem with the agency's position of simply using the search terms the grievants suggested (as distilled to the list of 72). This Department cannot find that the agency has failed to comply with the grievance process on this issue.

Within five workdays of receipt of this ruling, the grievants are ordered to provide the agency with their final response to the combined search method issue discussed in EDR Ruling Nos. 2010-2628, 2010-2629 (if they have not already done so), as well as any further suggested refinement to the list of 72 search terms. **Within five workdays of the agency's receipt of this information from the grievants**, the agency is directed to provide an updated estimate of charges. If no such information is submitted to the agency by the grievants, the most recent estimate of charges will be the final estimate. The grievants will be responsible for paying one-half of the estimated amount before the document collection and production will progress. The deposit of one-half of the estimated charges will be due **within five workdays of the grievants' receipt of the updated estimate of charges or, if no further information is submitted by the grievants regarding the combined search method or refined search terms, within five workdays of receipt of this ruling**.

This Department will not entertain further requests for reconsideration by the grievants on these particular issues again. The previous rulings speak for themselves. Further requests for reconsidered compliance rulings on these same issues by the grievants will be relevant in determining whether they are using the grievance procedure to harass or impede agency operations.²

This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² See Va. Code § 2.2-3003(C).

³ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).