

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: October 28, 2010; Ruling #2010-2812; Agency: Department of Behavioral Health and Developmental Services; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Behavioral Health & Developmental Services
Ruling No. 2011-2812
October 28, 2010

The grievant has requested that this Department reconsider EDR Ruling No. 2011-2772 regarding the alleged noncompliance with the grievance procedure of the Department of Behavioral Health and Developmental Services (the agency) in not providing requested documents. Primarily, the grievant requests reconsideration based on this Department's reliance upon the agency's statement that the grievant had identified himself as a "hostile witness." The grievant has clarified in his request for reconsideration that he never indicated that he would be a hostile witness to the agency specifically. Rather, the grievant states he wrote to the agency, "I may be considered by some to be a hostile witness."

While we understand the distinction the grievant is making, we also understand how the agency could have reasonably interpreted the grievant's statement as identifying himself as hostile to the agency. However, even if the grievant's statement about being a "hostile witness" is no longer considered in this Department's analysis, the result of EDR Ruling No. 2011-2772 does not change. Because of the conflicting positions between the two parties in this grievance, it cannot be said that the interests of the agency and the grievant are aligned. This conflict alone would be sufficient to establish the agency's reasonable concerns about providing the federal EEOC documents at issue to the grievant and the unknown impact such disclosure would have on the pending federal EEOC matter. Consequently, the factual issues identified in the grievant's request for reconsideration do not alter this Department's balancing analysis as discussed in EDR Ruling No. 2011-2772. There is no basis for that Ruling to be changed.¹

The other questions raised by the grievant can be addressed through EDR's AdviceLine. The grievant may contact AdviceLine by calling 1-888-232-3842. This Department's rulings on matters of compliance are final and nonappealable.²

Claudia T. Farr
Director

¹ One issue the grievant asserts is that the relevant statutory provision does not include any balancing of the interests analysis. While this is a correct assertion, this Department has used the balancing analysis to determine whether there is "just cause" for not providing a relevant document. See, e.g., EDR Ruling Nos. 2009-2320, 2009-2332. As the statutory provision indicates, documents relating to the actions grieved shall be made available "[a]bsent just cause." Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

² See Va. Code §§ 2.2-1001(5), 2.2-3003(G).