

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: March 17, 2011; Ruling No. 2011-2909; Agency: Virginia Community College System; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Community College System
Ruling Number 2011-2909
March 17, 2011

The grievant has requested a ruling regarding the Virginia Community College System's (the agency's) alleged noncompliance with the grievance procedure and EDR Ruling No. 2011-2860.

FACTS

On or about September 22, 2010, the grievant received a Group I Written Notice for violating policy related to cell phone usage. The grievant has challenged the Written Notice in his grievance, dated October 2, 2010, and requested various documents. In EDR Ruling No. 2011-2860, this Department addressed certain of the grievant's document requests. The ruling both ordered the agency to produce certain documents and denied portions of the grievant's requests. The grievant has now asserts that the agency has failed to produce documents ordered by EDR Ruling No. 2011-2860. The grievant also has raised additional document requests.

DISCUSSION

Method of disciplinary actions of others

The grievant sought information about how other employees were disciplined (or not) for allegedly improper cell phone use. Since the issuance of EDR Ruling No. 2011-2860, the agency has provided information about how the phone use of employees was flagged for further review by supervisors. However, the grievant has not been provided any information about what other disciplinary actions were taken (or not) against other employees.

In most cases involving a claim of inconsistent treatment of employees, a grievant can obtain related documents addressing the treatment of employees in the grievant's reporting line, division/department, and/or at the same facility.¹ In this case, there is no indication that a broader agency-wide request is needed. Rather, the relevant scope of documents regarding consistency of discipline will be limited to how employees at the particular campus of the

¹ See EDR Ruling Nos. 2009-2150, 2009-2178; EDR Ruling No. 2009-2087.

Community College in which the grievant works were treated in situations of alleged cell phone misuse. Any documents beyond that scope would have such low value in this case that the burden to the agency to gather and produce them outweighs any materiality of the documents.

As previously stated in EDR Ruling No. 2011-2860, the agency must produce information responsive to this document request. At this time, it is not clear whether documents exist on this issue of consistency of discipline of other employees at the grievant's campus. Possibly responsive documents could include disciplinary actions of other employees, counseling of employees whether formal or informal, and/or documents reflecting how employees were flagged during audits or spot checks (to differentiate those who were referred for possible disciplinary actions and those that were not, which could include, but not be limited to, the spot check phone-use records of other employees). When providing copies of such documents, however, any non-relevant personal information must be redacted, which could include, for example, names, social security numbers, telephone numbers, or home addresses.² Further, the parties may mutually agree to allow for disclosure of relevant non-privileged information in an alternative form that still protects the privacy interests of third parties, such as a chart or table, in lieu of producing of original redacted documents.³

Documents supporting prior counseling

As stated in EDR Ruling No. 2011-2860, the grievant sought documents supporting the statement in a 2008 counseling that he made inappropriate charges. The counseling resulted in the revocation of his agency-issued credit card. The agency has produced a copy of the counseling, but no documents that supported the reasons for the counseling, i.e., documentation showing what inappropriate charges were allegedly made by the grievant. The agency has attempted to locate documents regarding the grievant's credit card use that led to the counseling, but has apparently been unable to do so. The agency has discovered a two-page document purporting to reflect credit card charges of the grievant, which also apparently includes some of the charges the agency may have been felt were improper. The agency is not sure that this document was relied upon or supports the counseling. However, based on the information available to this Department, this document could be relevant to the grievant's document request. Therefore, the agency should provide the grievant a copy of the two-page document recently located.

The agency notes that, at the time, the record-keeping practices regarding credit card purchases ultimately left the credit card holder as the final custodian of credit card billing and reconciliation statements. These practices could explain why the agency does not have any other documents responsive to this request. Indeed, because of this record-keeping, the agency asserts that the grievant should have documentation about his past credit card usage. The agency requests that this Department order the grievant to produce those documents. However, it would be premature for this Department to address any alleged noncompliance regarding such a document request, if it has even been presented to the grievant. The agency must first request

² See Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

³ E.g., EDR Ruling No. 2006-1312.

the documents from the grievant. Then, if the documents are not produced without just cause, the agency may follow the noncompliance process in Section 6.3 of the *Grievance Procedure Manual*.

Pattern of behavior documents

In EDR Ruling No. 2011-2860, the agency was required to determine whether documents about an alleged “pattern of intimidation and inappropriate behavior by human resources” existed outside Human Resources. The agency has attempted to find such responsive documents and located none. Consequently, because the agency has no documents responsive to this request in its custody or control, this Department cannot find that the agency has failed to comply with the grievance procedure.

Additional Requests

The grievant appears to have also requested that the agency provide additional documents. The requested documents are: 1) documents reflecting when and why the agency ceased providing cell phone billing statements to employees; 2) documents indicating other employees’ raising concerns about managing cell phone use without receiving billing statements; and 3) documents showing that some agency phones have remained active even after being surrendered by employees. To the extent the grievant’s ruling request seeks this Department’s intervention to order the agency to provide these documents, the request is denied. Similar to the agency’s request for any credit card billing documents from the grievant mentioned above, the agency must first have the opportunity to determine whether the documents are relevant, exist, and/or may be produced. Only if there is an issue of noncompliance raised following the procedures set forth in Section 6.3 of the *Grievance Procedure Manual* can this Department then address any alleged failure to produce the requested documents.

CONCLUSION

The agency is ordered to produce the two-page document allegedly related to the grievant’s credit card charges and information responsive to the grievant’s request for documents regarding disciplinary actions taken (or not) against other employees at the grievant’s campus for alleged cell phone misuse as more specifically discussed above. The grievant’s ruling request is otherwise denied. This Department’s rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

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