

Issue: Compliance – Grievance Procedure (documents); Ruling Date: May 12, 2011;  
Ruling No. 2011-2973; Agency: Department of Corrections; Outcome: Grievant Not  
In Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling No. 2011-2973  
May 12, 2011

The grievant has asked for a compliance ruling from this Department. He alleges that the Department of Corrections (DOC or the agency) failed to comply with the grievance procedure by not providing requested documents.

FACTS

The grievant was employed by the agency as a Lieutenant. On December 29, 2010, the grievant was terminated. On January 27, 2011, the grievant initiated a grievance challenging his termination.

After initiating his grievance, the grievant requested from the agency "all documentation relating to [his] grievance pursuant to the Freedom of Information Act and Section 8.2 of the *Grievance Procedure Manual*." The grievant alleges that he did not receive any documentation to date. After the grievant apparently failed to receive a response to his request, he notified the agency of their noncompliance. According to the agency, the grievant sent a notice of noncompliance to its facility's human resource office, but not to the agency head.

In response to the grievant's document request, the agency facility's human resource officer sent a letter to the grievant on April 20, 2011, stating the agency was unable to fulfill the grievant's request because he did not specify which documents he was seeking in connection with his January 27<sup>th</sup> grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily without this Department's involvement. Specifically, if an agency fails to correct an alleged noncompliance, then the grievant must first notify the agency head in writing of the alleged noncompliance and

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

give the agency 5 workdays to correct any noncompliance.<sup>2</sup> If the grievant still feels that the agency is noncompliant, then he may request a ruling from this Department.

In this case, the grievant's request for a compliance ruling is premature because the grievant has not shown that he first notified the agency head in writing of the alleged procedural violations, as required by the grievance procedure. The grievant is therefore advised that if he still desires a compliance ruling from this Department, he must first give written notice of the alleged noncompliance to the agency head and allow the agency five days to correct any noncompliance. Only after the grievant has satisfied this procedural prerequisite will this Department address any claim of noncompliance.

Once the grievant provides the agency head with written notice of the alleged noncompliance, the agency will have five calendar days from receipt of that notice to respond to the grievant's document request, by producing responsive documents. If responsive documents are withheld due to a claim of irrelevance and/or "just cause," the agency must provide the grievant with a written explanation of each claim within 10 workdays from its receipt of the noncompliance notice.<sup>3</sup> The grievance statute provides that "[a]bsent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party."<sup>4</sup> This Department's interpretation of the mandatory language "shall be made available" is that absent just cause, all relevant grievance-related information *must* be provided. The grievance statute further states that "[d]ocuments pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance."<sup>5</sup>

To the extent that there are additional questions about what specific information the grievant is seeking, we encourage the parties to first communicate directly to clarify those concerns. If the grievant should find he is still not satisfied with the agency's response after the parties have had an opportunity to discuss which documents he seeks, then he may renew his request for a compliance ruling from this Department.

This Department's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> *Id.*

<sup>3</sup> *Grievance Procedure Manual* § 8.2.

<sup>4</sup> Va. Code § 2.2-3003(E); *Grievance Procedure Manual*, § 8.2. "Just cause" is defined as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual* § 9. Examples of "just cause" include, but are not limited to, (1) the documents do not exist, (2) the production of these documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.

<sup>5</sup> *Id.*

<sup>6</sup> Va. Code §§ 2.2-1001(5), 2.2-3003(G).