

Issue: Reconsidered Compliance Ruling – Grievance Procedure (documents); Ruling  
Date: June 2, 2011; Ruling No. 2011-2981; Agency: Department of Corrections;  
Outcome: Agency Not In Compliance.



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

**RECONSIDERED COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Corrections  
Ruling Number 2011-2981  
June 2, 2011

The agency has requested that this Department reconsider its compliance determination in Ruling No. 2011-2959 (the “initial compliance ruling”), which found the agency to be noncompliant with the document discovery provisions of the grievance procedure.<sup>1</sup> For the reasons discussed below, this Department stands by its May 9, 2011 determination that the agency had failed to comply with the grievance procedure.

FACTS

At issue in the May 9, 2011 initial compliance ruling was whether the agency had properly responded to the grievant’s February 18, 2011 document request which pertained to his February 4, 2011 grievance.<sup>2</sup> On February 18, 2011, the grievant sent a letter to his facility’s human resource manager, requesting that the agency provide all documentation relating to his grievance, including incident reports, investigative reports, any witness statements, findings of fact, or any recommendations for discipline.<sup>3</sup> On March 8, 2011, the grievant sent a notice of noncompliance, expressly directed to the agency head, and sent to the office address of the same human resource manager. The grievant’s notice of noncompliance indicated that he had not received a response nor any of the requested documents from the agency.<sup>4</sup> An employee of the agency signed the March 8<sup>th</sup> notice as “received” on March 8, 2011.

In the initial compliance ruling, EDR determined that the agency did not comply with the document discovery provisions of the grievance procedure.<sup>5</sup> In the agency’s request for reconsideration, the agency questions how the agency was noncompliant when, the agency asserts, the grievant never sent a notice of noncompliance to the agency head as required by the grievance procedure.

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<sup>1</sup> EDR Ruling No. 2011-2959.

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

### DISCUSSION

The crux of this Department's initial compliance ruling was whether the agency had properly responded to the grievant's February 18, 2011 document request.<sup>6</sup> During the initial compliance ruling investigation, the agency admitted that it had received the February 18<sup>th</sup> request, but did not respond.<sup>7</sup> According to the grievance procedure, upon receipt of a document request, a party has the duty to search its records to ensure that, absent just cause, all such relevant documents are provided within five workdays of receipt of the request.<sup>8</sup> If the party does not respond to the document request within five workdays, then the nonresponding party is out of compliance. Here, the agency admittedly did not respond and, therefore, this Department ordered the agency to correct its noncompliance in the initial compliance ruling.<sup>9</sup>

The agency further appears to argue that the grievant's compliance ruling request was premature because the agency head did not receive the notice of the noncompliance with an opportunity to correct its noncompliance before this Department issued its ruling. Under the grievance procedure, notice of noncompliance must be made to the agency head before a grievant may seek a compliance ruling from EDR.<sup>10</sup> Here, the notice of noncompliance was expressly directed to the agency head and signed and stamped as "received" by the grievant's facility. The fact that it was human resources at the grievant's facility, not the agency head, that directly received the notice, is immaterial. It is reasonable for an employee to expect that a notice of agency noncompliance expressly directed to the agency head, and mailed to the business address of an agency human resources office, would be forwarded by human resources to the agency head. At the very least, human resources could have notified the grievant that the agency did not consider the notice to be properly addressed to the agency head, so that the grievant would have an opportunity to mail the notice to another mailing address. Indeed, given that this is an expedited grievance which challenges a job loss, the agency would be expected to attempt to take any reasonable measures necessary to clarify any potential impediments to the timely processing of the grievance.<sup>11</sup> However, the agency now alleges that it has rectified the initial noncompliance by sending the requested documents to the grievant. Should the grievant find he is not satisfied with the agency's response, he can renew his request for additional documents, and the agency will then be required to respond within five workdays of receipt of the request.

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Claudia T. Farr  
Director

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Grievance Procedure Manual* § 8.2.

<sup>9</sup> EDR Ruling No. 2011-2959.

<sup>10</sup> Va. Code § 2.2-3003(G); *Grievance Procedure Manual* § 6.3.

<sup>11</sup> To the extent that the agency argues that it did not respond to the grievant's request because it was not aware that a grievance had been initiated, a simple phone call likely would have answered any lingering questions about whether a grievance had been filed.