

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: October 7, 2011; Ruling No. 2012-3124; Agency: Virginia Department of Transportation; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Virginia Department of Transportation
Ruling Number 2012-3124
October 7, 2011

The grievant has requested a ruling regarding the alleged noncompliance with the grievance procedure of the Department of Transportation (the agency) in not providing requested documents in his May 25, 2011 grievance.

FACTS

The grievant has raised two issues in his current ruling request. First, he asserts that the agency has failed to provide the entirety of a Critical Hire Database. Instead, the agency provided the relevant line-item regarding the position addressed in the grievant's May 25, 2011 grievance (Position No. 22888). The grievant seeks the entirety of the Critical Hire Database. Second, the grievant has requested, essentially, all documents concerning the agency's recruitment for Position No. 22888. The agency states it has produced all such documents to the grievant, but he disagrees. In support of his argument that the agency has additional documentation, he references an alleged statement by an agency manager in June 2011 that the agency had received applications for Position No. 22888, they were being considered, and a decision would be made in the next 30 days. It does not appear that a selection was made for Position No. 22888.

DISCUSSION

This ruling addresses the grievant's requests for documents under the grievance procedure.¹ This ruling does not address whether any such documents are subject to disclosure under the Virginia Freedom of Information Act (FOIA). Nothing in the grievance statutes or procedure limits or otherwise affects the agency's duty or discretion under FOIA about whether to disclose a document.

Critical Hire Database

As discussed in EDR Ruling No. 2011-3012, the grievant's May 25, 2011 grievance challenges the agency's April 29, 2011 job recruitment posting for Position No. 22888. The grievant's references to various policies in his ruling request do not widen the scope of the

¹ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

management actions challenged. Rather, the recruitment for Position No. 22888 is the management action challenged by the May 25, 2011 grievance and any references to policies simply relate to the grievant's arguments about how the agency may have mishandled that recruitment. As such, the agency's decision to disclose only information in the Critical Hire Database about Position No. 22888 is appropriate. Nothing the grievant has described in his ruling request provides any indication that information about other positions in the Critical Hire Database would be relevant to the management actions or inactions grieved in the May 25, 2011 grievance.² The grievant's ruling request is denied.

Recruitment Documents

The agency states it has provided the grievant all documents related to the recruitment for Position No. 22888. The grievant argues that the statement by the agency manager about making a decision in the selection process within the next 30 days indicates there are additional documents in the agency's possession it has not produced. However, we are not persuaded by the grievant's argument about the agency's manager's statement. A statement of an intention in June 2011 to move forward with the selection hardly shows that the agency has other documents in its possession. Having produced no other indication that there are any documents in existence that the agency has failed to produce, we cannot find that the agency has failed to comply with any provision of the grievance procedure as to this document request. The grievant's ruling request is denied.

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

Claudia T. Farr
Director

²See *id.*

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