

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: January 26, 2012; Ruling No. 2012-3220; Agency: Department of State Police; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of State Police  
Ruling Number 2012-3220  
January 26, 2012

The grievant has requested a ruling regarding the alleged noncompliance with the grievance procedure by the Department of State Police (the “agency”) in not providing requested documents. For the reasons discussed below, this Department finds no noncompliance on the part of the agency.

**FACTS**

On November 3, 2011, the grievant received a Group III Written Notice for disclosing confidential information and for threatening a member of the general public on July 3, 2010. The grievant challenged the Group III Written Notice in his November 7, 2011 grievance, alleging he did not disclose confidential information and that the comment he made to a member of the general public was not perceived as threatening. To support his claims, the grievant requested that the agency provide all documentation relating to his grievance including reports and communication regarding the administrative investigation into the July 3, 2010 incident; the rank and disposition of any officer who disclosed or discussed any confidential information about investigations or incidents within the past eight years; and the rank and disposition of any officer who threatened a member of the public within the past eight years. On December 14, 2011, the grievant sent a notice of noncompliance to the agency head indicating that he had not received a response nor any of the requested documents from the agency.

On December 20, 2011, the grievant sent the agency a Freedom of Information Act (FOIA) document request. On December 21, 2011, the agency responded to the grievant’s December 20<sup>th</sup> FOIA request and asserts that it mailed all of the requested documents and information to the grievant, including all of the documents the grievant requested on November 7, 2011 as well. However, in a December 27, 2011 email addressed to this Department, the grievant alleges he did not receive the requested documents.

On December 28, 2011, the grievant sent the agency a second FOIA document request, asking for the same documents in addition to the criminal investigation report dated July 3, 2010. The agency responded on December 29, 2011, indicating all of the documents had been provided

except for the criminal investigative file which the agency asserts is exempt from dissemination pursuant to Virginia statute.

In a January 17<sup>th</sup> email addressed to this Department, the grievant admits he has received all of the requested documents except for the criminal investigative report. Now, the grievant seeks a compliance ruling on this matter, asserting the criminal investigative report is relevant to the action grieved and should be made available to him.

### 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 (EDR's) involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.<sup>2</sup> Where a grievant asserts that the agency is noncompliant, the grievant must notify the agency head of the noncompliance.<sup>3</sup> If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for its delay in conforming to EDR's order.<sup>4</sup>

In this case, the grievant's request for a compliance ruling with regard to the criminal investigative report 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 request. If the criminal investigative report is withheld due to a claim of

---

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

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

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

<sup>4</sup> While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party.

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>5</sup>

As to the grievant’s request for a compliance ruling pertaining to the agency’s alleged failure to produce the reports and communication regarding the administrative investigation into the July 3, 2010 incident; the rank and disposition of any officer who disclosed or discussed any confidential information about investigations or incidents within the past eight years; and the rank and disposition of any officer who threatened a member of the public within the past eight years, that issue is now moot as the grievant has subsequently received those documents.

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

---

Claudia T. Farr  
Director

---

<sup>5</sup> *Grievance Procedure Manual* § 8.2.

<sup>6</sup> Va. Code § 2.2-3003(G).