

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: February 7, 2012; Ruling No. 2012-3239; Agency: Department of Corrections; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2012-3239
February 7, 2012

The Department of Corrections (the agency) has requested a compliance ruling to address the hearing officer's pre-hearing order regarding the production of certain documents and the agency's purported compliance with that order. For the reasons discussed below, this Department finds that the agency has substantially complied with the order to produce documents.

FACTS

In the grievance at issue in Case No. 9756, the agency reports that the hearing officer ordered that an unredacted copy of the Report of Investigation File prepared by the agency's Office of the Inspector General be produced to the grievant. Although the agency has not given an unredacted copy of this file to the grievant, it represents it has taken the following steps: 1) a redacted copy of the investigation file has been produced; 2) an unredacted copy is in the possession of the agency's advocate and will be available to the hearing officer, the grievant, and the grievant's attorney for review at the hearing; 3) an unredacted copy is available for the grievant to review in the Special Investigations Unit office from which notes may be taken. The agency states it is also prepared to provide an unredacted copy for the hearing officer's file "under the stipulation that it not be further distributed without specific authorization of the Inspector General."¹

DISCUSSION

The grievance statutes provide 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."² 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 statute further states that

¹ Providing a copy of these records with such a stipulation is not addressed in this ruling because it does not yet appear to be a ripe issue. This Department is not aware whether the hearing officer has requested an unredacted copy in the manner described by the agency for the hearing file.

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

“[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.”³

The primary concern the agency is attempting to address is having to place an unredacted copy in uncontrolled hands, which could result in further unnecessary, and potentially harmful, dissemination with respect to sensitive third party and security information. Therefore, the agency has not given an unredacted copy of the investigation file to the grievant. However, the agency has taken other steps to comply with the hearing officer’s order such that the grievant and his attorney would be able to discover, review, and present evidence at hearing regarding the entirety of the investigation file. The agency has made the unredacted version available for review by the grievant and the same version will be available at hearing. The agency’s steps allow the grievant to do just about anything with the investigation file as a piece of evidence that he could if an unredacted copy was given to him, without actually giving him the unredacted copy.

In short, the agency’s approach is a reasonable means by which to protect its concerns about the unnecessary dissemination of its sensitive documents.⁴ This Department finds there is just cause for withholding the unredacted file under these facts, given the agency’s alternative approach to providing full disclosure of the information in the file. We see no prejudicial impact on the grievant’s ability to present his case at hearing as to this investigation file, and find the agency has substantially complied with the hearing officer’s order to produce the file. Assuming the facts are as the agency has presented them in its submission to this Department, which we have no basis to dispute at this time, there is no need for the agency to produce the unredacted copy to the grievant.

This Department’s rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

³ *Id.*

⁴ The agency’s approach was similarly upheld in a ruling in an analogous case. *See* EDR Ruling Nos. 2010-2440, 2010-2447, 2010-2452.

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