

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: February 23, 2012; Ruling No. 2012-3262, 2012-3263; Agency: Old Dominion University; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Old Dominion University
Ruling Numbers 2012-3262, 2012-3263
February 23, 2012

The grievant has requested a ruling regarding Old Dominion University's (the University's) alleged noncompliance with the grievance procedure in allegedly failing to produce requested documents. This ruling finds that the University has complied with the document discovery provisions of the grievance procedure.

FACTS

The grievant's document requests concern two grievances filed on November 18, 2011 and January 6, 2012, respectively.¹ The November 18, 2011 grievance addresses the grievant's performance evaluation. The January 6, 2012 grievance challenges, primarily, the issue of retaliation for exercising grievance and/or Freedom of Information Act (FOIA) rights. The facts giving rise to the January 6, 2012 grievance concern an exchange the grievant had with a supervisor about work to be completed for software installation and configuration.

The grievant seeks three categories of documents: 1) daily work reports for other employees; 2) arrival and departure times for other employees; and 3) materials related to recent system audits and security scans. The University has declined to provide these materials based on the position that they are not relevant to the grievances and/or concern personnel information of other employees.

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

¹ The grievant states he has also initiated a grievance on or about February 8, 2012 regarding recent security scans. To the extent that any of these document requests may be related to this recent grievance is not an issue addressed in this ruling. The current compliance ruling was made regarding the two prior grievances, not the February 8, 2012 grievance.

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

interpretation of the mandatory language “shall be made available” is that absent just cause, all relevant grievance-related information *must* be provided. “Just cause” is defined as “[a] reason sufficiently compelling to excuse not taking a required action in the grievance process.”³ For purposes of document production, examples of “just cause” include, but are not limited to, (1) the documents do not exist, (2) the production of the documents would be unduly burdensome, or (3) the documents are protected by a legal privilege.⁴ The 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.”⁵

This Department has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, prior to the hearing phase. Early access to information facilitates discussion and allows an opportunity for the parties to resolve a grievance without the need for a hearing. To assist the resolution process, a party has a duty to conduct a reasonable search to determine whether the requested documentation is available and, absent just cause, to provide the information to the other party in a timely manner.

Daily Work Reports & Arrival/Departure Times

The daily work reports and arrival/departure times sought by the grievant are e-mails similar to those that he must submit to management containing a summary of his daily work activities and work hours. The grievant believes he may be the only employee in his department that must submit such reports on a daily basis. He argues that singling him out in this manner, if that is the case, supports his claim of retaliation. However, given this argument, nothing about the content of the reports requested is relevant to either grievance.

The issue that may be relevant is whether the grievant is the only employee subject to these reporting requirements, not the content of the reports themselves. Consequently, there is no need for the University to produce the reports because this request, as stated, seeks documents that are not relevant to the grievances. Whether a different request seeking information about any other employee being subject to this reporting requirement is a separate matter not the subject of this ruling.

System Audits & Security Scans

The grievant states that there were certain requests made of him concerning system audits and security scans that occurred on or about January 11, 2012. The grievant argues that these events additionally support his argument of retaliation. However, these scans occurred after the grievant initiated his retaliation grievance on January 6, 2012, which, in any event, seems to address an e-mail exchange with a supervisor from December 2011. Consequently, materials related to these system audits and security scans are not relevant to either of the two grievances addressed in this ruling.

³ *Grievance Procedure Manual* § 9.

⁴ *See, e.g.*, EDR Ruling No. 2008-1935, 2008-1936; EDR Ruling No. 2001QQ.

⁵ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

CONCLUSION

For the reasons set forth above, this Department finds that the University has complied with the grievance procedure in responding to these three document requests. The documents are not relevant to these grievances and need not be provided.⁶ As such, the grievant's ruling request is denied. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁶ Because of the determination that the documents requested were not relevant to either grievance, the question of whether they could be withheld based on the argument that they are personnel records of other employees is not reached. However, this Department will note that it has repeatedly held that the restrictions on personnel document disclosure in state policy are overridden by the statutory mandate requiring parties to a grievance proceeding to produce relevant documents. *E.g.*, EDR Ruling No. 2009-2087. Further, similar exemptions under FOIA are not applicable to document requests under the grievance procedure and cannot solely be relied upon to justify withholding a document. *E.g.*, EDR Ruling No. 2006-1386. Indeed, the grievance statute specifically contemplates the production of documents related to non-parties. Va. Code § 2.2-3003(E) ("Documents 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.").

⁷ *See* Va. Code §§ 2.2-1001(5), 2.2-3003(G).