

Issue: Compliance – Grievance Procedure (Documents); Ruling Date: August 8, 2012; Ruling No. 2012-3376; Agency: Department of Motor Vehicles; Outcome: Agency in Compliance.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

COMPLIANCE RULING

In the matter of the Department of Motor Vehicles
Ruling Number 2012-3376
August 8, 2012

The grievant has requested a compliance ruling regarding alleged noncompliance with the grievance procedure by the Department of Motor Vehicles (the “agency”) in not providing requested documents. For the reasons discussed below, EDR finds no basis for a ruling of noncompliance at this time.

FACTS

The grievant is employed with the agency, based in a regional office. On March 16, 2012, the grievant was informed that he would be transferred to another regional office, approximately sixty miles away from his current office location. On April 12, 2012, the grievant received an “Allegation Letter” from the agency, stating that it had been alleged that the grievant had violated DHRM Policy 2.30 (Workplace Harassment). On April 14, 2012, the grievant initiated a grievance with the agency asserting that the transfer and the issuance of the Allegation Letter were retaliatory actions taken against him based on engagement in a protected activity. In addition to other claims, he further alleges discrimination based on age and veteran status, which has allegedly contributed to a hostile work environment.

On June 8, 2012, the grievant submitted requests for documents to the agency. The agency head issued a written response to grievant that “[t]he documents and emails [grievant] requested will not be provided because they are not relevant and [the] grievance has not been qualified for hearing.” Consequently, the grievant seeks a compliance ruling from EDR.

DISCUSSION

The grievance statute provides 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, in a timely fashion.”¹ EDR’s interpretation of the mandatory language “shall be made available” is that absent just cause, all

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

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.”² 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.³ 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.”⁴

Moreover, EDR has 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. All such documents must be provided within five workdays of receipt of the request. If it is not possible to provide the requested documents within the five workday period, the party must, within five workdays of receiving the request, explain in writing why such a response is not possible, and produce the documents no later than ten workdays from the receipt of the document request. If responsive documents are withheld due to a claim of irrelevance and/or “just cause,” the withholding party must provide the requesting party with a written explanation of each claim, no later than ten workdays from receipt of the document request.⁵

In this case, the agency has withheld the requested documents, claiming irrelevance and stating that the grievance is not qualified for hearing. To the extent that the agency argues the documents need not be produced because the agency head did not qualify the grievance for a hearing, we find this contention to be without merit. As mentioned above, it is necessary that both parties to a grievance should have access to relevant documents during the management steps and qualification phase, regardless of whether the grievance proceeds to hearing. Indeed, the policy of the Commonwealth as set forth in the grievance statute encourages the informal resolution of employee problems and complaints.⁶ As to the agency’s claim of irrelevance, EDR has reviewed the grievant’s list of requested documents and will address those requests below.

In all but the first and third bulleted requests, the grievant essentially asks for e-mails and other written communications, notes, recordings, and statements taken or received by specified parties, from January 1, 2011 to the present date regarding “any incident, activity and person in the [grievant’s] Division.” EDR concludes that these requests are overly broad and burdensome; however, some of these documents may be relevant to the grievant’s claims. Therefore, EDR directs the grievant to provide the agency with a written statement refining the request for

² *Grievance Procedure Manual* § 9.

³ *See, e.g.*, EDR Ruling No. 2008-1935, 2008-1936; EDR Ruling No. 2001QQ.

⁴ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

⁵ *Grievance Procedure Manual* § 8.2.

⁶ Va. Code § 2.2-3000(A); *Grievance Procedure Manual* § 2.2 (2004). The Virginia Code does not condition the availability of documents requested under the grievance procedure on whether the grievance has qualified for hearing. Va. Code § 2.2-3003(E).

documents regarding “any incident, activity and person in the [grievant’s] Division” **within ten calendar days of the date of this ruling.** The grievant may, for example, identify specific incidents relevant to the grievance.

With respect to grievant’s first request, for copies of complete personnel files of two named employees, the grievant has not provided justification for why two entire personnel files might be relevant to his grievance. While there may be relevant documents in these files, the grievant has not shown a basis for the production of the entire personnel files. EDR therefore directs the grievant to provide the agency with either a written statement of the relevance of these documents, or a refined request for specific records or categories of records that may be available in these files **within ten calendar days of the date of this ruling.**

With respect to the grievant’s third bulleted request, for the complete and unredacted findings regarding an investigation conducted by the agency’s human resource department, it appears that this information is potentially relevant, though not necessarily in unredacted form. To the extent that the agency relied on information gathered pursuant to this investigation as a basis for the Allegation Letter issued to the grievant, the agency should produce these records or the relevant portion thereof. Should the agency not produce these documents, they cannot then be relied upon as a justification of the grieved action, should a hearing on this matter ultimately occur. If no such documents exist, the agency shall inform the grievant of their nonexistence.⁷

CONCLUSION

While EDR does not find noncompliance at this time, the parties are cautioned to exercise good faith in dealing with one another. As stated above, the grievant is directed to further refine and/or justify his requests for documentation **within ten calendar days of the date of this ruling.** Upon receipt thereof, the agency has the duty to search its records to ensure that, absent just cause, all such relevant documents are produced and provided.⁸ If responsive documents are withheld due to a claim of irrelevance or just cause, the agency must provide the grievant with a written explanation of *each* claim, no later than ten workdays from receipt of the request.⁹

EDR’s rulings on matters of compliance are final and nonappealable.¹⁰



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⁷ *Grievance Procedure Manual* § 8.2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Va. Code § 2.2-1202.1(5), § 2.2-3003(G).