

Issue: Compliance/grievance procedure/documents; Ruling Date: September, 26, 2006;
Ruling #2007-1402; Agency: Department of Corrections; Outcome: agency not in
compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2007-1402
September 26, 2006

By letter dated July 6, 2006, the grievant requests a compliance ruling from this Department. The grievant claims that the Department of Corrections (DOC or the agency) has failed to provide her with requested documents related to her May 26, 2006 grievance.

FACTS

The grievant is employed by the agency as an Offices Services Assistant. On May 26, 2006, the grievant initiated a grievance challenging her non-selection for a position as a Program Support Technician, Sr. The grievant alleges that the hiring decision was unfair, the result of nepotism, and that the agency misapplied policy in the selection process.

On June 7, 2006, the grievant made a written request to the agency for applications, resumes, interview notes, recommendations of the panel and screening criteria for the "final candidates for position number P1727."¹ On June 12, 2006, the grievant was provided with documents related to her only and did not receive any documents pertaining to the selected candidate. As such, on June 14, 2006, the grievant gave the agency head written notice of noncompliance. On June 27, 2006, the agency advised the grievant by letter that "...your request was responded to on June 12, 2006. You were given copies of the requested documents in accordance with established guidelines. Additional documents relating to the other applicants can not be released to you."

By letter dated July 6, 2006, the grievant requested a compliance ruling from this Department regarding the agency's failure to provide requested documentation.

¹ According to the grievant, she was told by the agency that she and the selected candidate were the two final candidates for the position.

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.”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 grievance 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.”³ Documents, as defined by the Rules of the Supreme Court of Virginia, include “writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.”⁴ While a party is not required to create a document if the document does not exist,⁵ parties may mutually agree to allow for disclosure of relevant non-privileged information in an alternative form that still protects the privacy interests of third parties, such as a chart or table, in lieu of production of original redacted documents. To summarize, absent just cause, a party must provide the other party with all relevant documents upon request, in a manner that preserves the privacy of other individuals.

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.

In this case, the grievant challenges the agency’s failure to provide documentation relating to the successful candidate for the Program Support Technician, Sr. position. The agency asserts that “documents relating to other applicants can not [sic] be released to you.” The agency does not apparently dispute the relevance of the requested information to the grievant’s claims.

Documents relating to other applicants cannot be released under DHRM Policy 6.05, which states that applications for employment and results of pre-employment tests “may not be disclosed to third parties without the written consent of the subject

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

³ *Id.*

⁴ *See* Rules of the Supreme Court of Virginia, Rule 4:9(a)(1).

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

employee.” However, as this Department has previously explained with regard to DHRM Policy 2.10 (Hiring), to the extent materials otherwise protected by a DHRM policy are sought by a grievant in conjunction with the grievance process, DHRM policy is overridden by the statutory mandate requiring parties to a grievance proceeding to produce relevant documents.⁶ Thus, where documents relating to a selection decision are relevant to a grievance, the provisions of DHRM Policy 6.05 do not constitute just cause to deny access to documents. Accordingly, we find that the agency failed to comply with the grievance procedure in refusing to provide the grievant with the requested information regarding the selected candidate.

The agency is therefore ordered to produce the requested information to the grievant within 10 work days of its receipt of this ruling. The agency may redact any personally identifying information (such as the candidate’s social security number, telephone number, and address), provided that information relevant to the grievance is not redacted. The agency may charge the grievant its actual cost to retrieve and reproduce documents. The agency is to produce the information specified to the grievant within 10 work days of its receipt of this ruling.

This Department’s rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁶ See EDR Ruling No. 2004-683.

⁷ Va. Code § 2.2-3003(G).