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**COMPLIANCE RULING**

In the matter of George Mason University  
Ruling Number 2024-5721  
August 2, 2024

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) in relation to the alleged failure of George Mason University (the “university” or “agency”) to produce requested documents. For the reasons discussed below, EDR declines to find that the agency has failed to comply with the grievance procedure.

FACTS

On or about May 15, 2024, the grievant submitted a grievance challenging her annual performance evaluation as arbitrary and capricious. It appears that, in her email transmitting the grievance to her supervisor, the grievant also “request[ed] all information relevant to the grievance outlined in Attachment A, including but not limited to, the official documentation given to [her evaluation reviewer] to review” for the evaluation, with specific reference to certain narrative statements from the evaluation. On May 30, 2024, university human resources staff advised the grievant that she had been “provided ... all that they have on file.” The grievant then sought this ruling on grounds that additional documentation within the scope of her request had not been provided.

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, in a timely fashion.”<sup>1</sup> EDR’s 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.”<sup>2</sup> For purposes of document production, examples of just cause include, but are not limited to, the circumstances that (1) the documents do not exist, (2) the production of the documents would be

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<sup>1</sup> Va. Code § 2.2-3003(E); *see Grievance Procedure Manual* § 8.2.

<sup>2</sup> *Grievance Procedure Manual* § 9.

unduly burdensome, or (3) the documents are protected by a legal privilege.<sup>3</sup> The grievance statutes further provide 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.”<sup>4</sup>

EDR has also long held that both parties to a grievance should have access to relevant documents during the management steps and qualification 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.<sup>5</sup>

In assessing the grievant’s allegations of non-compliance by the university, EDR contacted both parties respectively to ascertain the nature of responsive documents allegedly not produced, and the university’s position on such documents. In the course of this assessment, the grievant provided an enumerated list of specific responsive documentary information she considered to be outstanding from her initial request. The university reviewed the list and provided additional documentation to the grievant (and to EDR). Upon this subsequent production, the university has represented to EDR that no further documentation exists responsive to the grievant’s requests.

EDR generally considers the nonexistence of responsive documents to be “just cause” for not producing relevant information as requested. Although the grievant has indicated she believes additional documents may still in fact exist, at this stage EDR does not have a basis to conclude that the university has failed to meet its obligation to conduct a reasonable search of its records to identify potentially responsive documents. Accordingly, we do not find that the agency is out of compliance with the grievance procedure at this time. To the extent the grievant would later learn that additional documentation did exist and should have been provided pursuant to the request under consideration here, nothing herein would prevent her from raising that issue via a future ruling request, or via other processes as appropriate, depending on the nature and significance of any information not provided.

### CONCLUSION

For the reasons set forth above, EDR finds that the agency appears to be in compliance with the grievance procedure at this time.

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<sup>3</sup> See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>4</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

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

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>

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<sup>6</sup> *Id.* §§ 2.2-1202.1(5), 2.2-3003(G).