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COMPLIANCE RULING

In the matter of the University of Virginia Medical Center
Ruling Number 2025-5903
July 9, 2025

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 alleged noncompliance with the grievance procedure by the University of Virginia Medical Center (the “agency”).

FACTS

On or about April 14, 2025, the grievant submitted two separate grievances to the agency: 1) a grievance about her receipt of a Step 1 Informal Counseling Memorandum, and 2) a grievance about alleged charge nurse scheduling inequities and inconsistencies. The grievant appears to have submitted a request for documents to the agency on or about May 5, 2025. While EDR issued a prior compliance ruling on this matter, the May 5, 2025 document request was not addressed, as it was not at issue, except to provide a deadline by which the agency should respond, May 23, 2025.¹ It appears that the agency provided a response on or about May 28, 2025. The grievant has raised various concerns with the agency’s response and, accordingly, requested this compliance ruling on or about June 12, 2025.²

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.”³ 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.”⁴ For purposes of document

¹ See EDR Ruling No. 2025-5887 at 4-5.

² The grievant initially requested a compliance ruling on May 28, 2025, but EDR declined to accept the request because the grievant had not yet provided notice of noncompliance to the agency head per Section 6.3 of the *Grievance Procedure Manual*.

³ Va. Code § 2.2-3003(E); *Grievance Procedure Manual* § 8.2.

⁴ *Grievance Procedure Manual* § 9.

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.⁵ In determining whether just cause exists for nondisclosure of a relevant document under the grievance procedure, and in the absence of a well-established and applicable legal privilege,⁶ EDR will weigh the interests expressed by the party for nondisclosure of a relevant document against the requesting party's particular interests in obtaining the document.⁷ 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."⁸

EDR 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. 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.⁹

In determining whether documents must be produced during the management resolution steps, EDR weighs the relevance — that is, the possible probative value — and materiality of the requested documents against possible competing interests, such as the privacy of other employees not involved in the grievance. Evidence is generally considered relevant when it would tend to prove or disprove a fact in issue.¹⁰

The first issue we will address is the grievant's request to receive the documentation provided by the agency in its "native format" with metadata intact. It appears that the agency produced documentation to the grievant as pdfs. In EDR's experience, producing requested documentation in a pdf format has been and is generally compliant with the grievance procedure. Producing "native format" documents can create unintended issues. Thus, EDR has not generally required or favored having documents produced in a "native format." As such, EDR does not find the agency's choice to produce pdfs of the requested records to be noncompliant with the grievance

⁵ See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

⁶ Certain well-established and applicable legal privileges recognized by courts in litigation will constitute just cause for nondisclosure under the grievance procedure without the need to balance competing interests. See, e.g., EDR Ruling No. 2002-215 (discussing attorney-client privilege).

⁷ See, e.g., EDR Ruling No. 2010-2372.

⁸ Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

⁹ *Grievance Procedure Manual* § 8.2.

¹⁰ See *Owens-Corning Fiberglas Corp. v. Watson*, 243 Va. 128, 138, 413 S.E.2d 630, 636 (1992) ("We have recently defined as relevant 'every fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue.'" (citation and internal quotation marks omitted)); *Morris v. Commonwealth*, 14 Va. App. 283, 286, 416 S.E.2d 462, 463 (1992) ("Evidence is relevant in the trial of a case if it has any tendency to establish a fact which is properly at issue." (citation and internal quotation marks omitted)).

procedure in this case. EDR will acknowledge that reasonable concerns could arise that question the authenticity of certain records or where reference to metadata is material to a question at issue. Although the grievant has raised certain concerns about the appearance of some of the produced records, the agency has provided a response explaining that the records have not been altered and appear as they exist. Accordingly, EDR does not find that there is a basis to order the agency to produce a “native format” version of any record or to provide metadata.

The grievant next asserts that the agency is withholding relevant documentation “related to staffing decisions, application processes, and personnel file access.” The grievant seeks for the agency to produce “all communications regarding hiring decisions and personnel file access contemporaneous to the grieved actions.” This argument appears to arise from the grievant’s submission on May 13, 2025 of, in the grievant’s words, “extensive requests regarding Assistant Nurse Manager applications and potential retaliation pattern.” The agency asserts that these records are not relevant to the grievant’s two active grievances as neither grievance concerns her job search or application for these positions. The grievant appears to seek these records “as they may establish whether the inequitable treatment in scheduling extends to career advancement opportunities.” While we understand the grievant’s arguments, it would appear that these records would be most relevant to whether there was “inequitable treatment” or other improper conduct with regard to the selection processes themselves, which is not a subject matter in either active grievance. As such, EDR concurs with the agency that these records need not be produced.

The grievant also raises concerns with the agency’s production of the “BeSafe report.” The grievant first questions why the report does not contain her statement or another witness’s statement. Whether the report itself should contain these statements as part of the report is not a matter of compliance with the grievance procedure within EDR’s purview. Instead, the relevant determination is whether the grievant has received the documentation she requested. EDR has confirmed with the agency that the grievant has received copies of the witness statements related to the incident giving rise to the report, and that the agency was not aware of any further witnesses. Therefore, we view this issue as resolved. The grievant further questions the record produced because it is “missing the audit trail, access logs, file state history, and submission data,” which the grievant views as “necessary to verify the report’s authorship, timing, and routing.” For the reasons already addressed above about not requiring production of records in “native format,” EDR sees no basis to require a different version to be produced. Although the grievant appears to seek verification of the document’s integrity, EDR has been presented with no reasonable questions that would necessitate inquiry into the metadata of this record.

The final matter addressed by the grievant in her ruling request is to seek clarification of the role of a member of the agency’s human resources staff in regard to the grievance process. EDR has reviewed the grievant’s submission and we do not find that the human resources team member identified has engaged in conduct that would be inconsistent with her role or the grievance procedure generally. She appears to be participating in the grievance process in a normal and common manner as a member of the agency’s human resources staff. Accordingly, we have no basis to limit or further define this individual’s role in relation to these grievances at this time.

CONCLUSION

For the reasons described above, EDR finds that the agency is in compliance with the grievance procedure and the relief requested by the grievant is respectfully denied. EDR is unsure

of the next step in these grievances. As such, we would direct the parties to communicate to ensure they are in agreement as to the next step. Whomever is to be acting (whether a response due from an agency step respondent, or the grievant to advance or conclude her grievances) must do so **within five workdays of receipt of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.¹¹

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¹¹ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).