



JANET L. LAWSON  
DIRECTOR

**COMMONWEALTH OF VIRGINIA**  
*Department Of Human Resource Management*  
*Office of Employment Dispute Resolution*

James Monroe Building  
101 N. 14<sup>th</sup> Street, 12<sup>th</sup> Floor  
Richmond, Virginia 23219

Tel: (804) 225-2131  
(TTY) 711

## COMPLIANCE RULING

In the matter of the Virginia Marine Resources Commission  
Ruling Number 2026-5935  
August 28, 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 Virginia Marine Resources Commission (the “agency”).

### FACTS

On or about June 12, 2025, the grievant submitted a grievance to the agency that primarily challenges receipt of a counseling memo but also addresses the grievant’s concerns with allegedly being excluded from certain public meetings, conferences, events, and division decision-making and communications. The grievant also raises issues with communication directives issued by the agency. The grievant appears to also have submitted requests for documentation under the Virginia Freedom of Information Act (FOIA).<sup>1</sup> However, the grievant has essentially requested that the agency produce records he has sought under FOIA pursuant to his grievance under the document request provisions of the grievance procedure. The agency has provided the grievant with a cost estimate to review 912 emails potentially responsive to the most recent version of the grievant’s document request. This ruling was requested to address the grievant’s arguments that the agency has failed to comply with the grievance procedure.

### 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.”<sup>2</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>3</sup> For purposes of document

<sup>1</sup> EDR has no authority to enforce or consider questions of compliance with FOIA. Accordingly, the grievant’s requests under FOIA are not addressed in this ruling.

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

<sup>3</sup> *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.<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</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>7</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, 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.<sup>8</sup>

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.<sup>9</sup>

The grievant's document request is for “[a]ll correspondence in its entirety, that could be considered part of the Grievance Record for [this grievance] from anyone who has been or could reasonably be assumed could be involved in any past or future step in the [grievance].”<sup>10</sup> Such a

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<sup>4</sup> See, e.g., EDR Ruling Nos. 2008-1935, 2008-1936.

<sup>5</sup> 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).

<sup>6</sup> See, e.g., EDR Ruling No. 2010-2372.

<sup>7</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>8</sup> *Grievance Procedure Manual* § 8.2.

<sup>9</sup> 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)).

<sup>10</sup> As this request was also made under FOIA, the agency provided the grievant with a cost estimate to review the emails potentially responsive, which the agency identified being 912 emails to review. The agency appears to have identified these emails based on the time period, subject matter, and identified individuals through searches run by information technology staff across the relevant email accounts. While that approach is certainly understandable in response to a FOIA request, for purposes of the grievance, the net cast was overly broad to locate documentation

request is a bit circular in that the “grievance record” is the record of the grievance process itself. That would include, for example, the grievance form and attachments thereto and the resolution step responses.<sup>11</sup> Inasmuch as the grievant has been necessarily involved in the grievance at each step, he already has all correspondence that encompasses the “grievance record.” However, the request further notes that it is meant to include “the correspondence related to … the events surrounding this matter.” Consequently, EDR interprets the grievant’s request as essentially seeking correspondence related to the matters addressed in his grievance.

EDR discussed the grievant’s document request with him to determine for what “events surrounding this matter” he is attempting to obtain related documentation. The grievant identified three areas: 1) communications regarding the counseling letter he received (as well as the preceding notice of intent), 2) communications regarding alleged exclusion from meetings and activities,<sup>12</sup> and 3) communications regarding concerns the grievant has raised with the agency about compliance with state law. EDR provided these categories of records to the agency to determine whether the agency had any such records and whether they could be produced. With regard to categories 1 and 3, the agency confirmed to EDR that the grievant has been provided with all documentation in their possession about those topics already and that no further documentation exists. With regard to category 2, the agency created a response or explanation to the meetings or activities identified by the grievant and located documentation about related communications, all of which have been provided to the grievant. Accordingly, it is EDR’s determination that the agency has complied with the document request provisions of the grievance procedure by providing the documentation in its possession related to the above categories.

The grievant has also sought an unredacted version of an email between the agency head and the Office of the Attorney General. The agency apparently produced the email in redacted form already. As discussed above, 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.<sup>13</sup> The correspondence sought is patently attorney-client communications. EDR is not aware of an exception to the general principles of this kind of privilege that apply here. While the grievant may assert that the redacted content of the email is relevant, relevance is not an exception that would overcome the proper basis to exclude this information from production. Accordingly, EDR finds that the agency need not produce the unredacted email in this context.

While this ruling was pending, the grievant also noted that he would like to obtain copies of the digital calendars of those in his management chain during the time period in question. It is debatable whether such documentation is properly encompassed by the grievant’s document request that is the subject of this ruling. However, even if this was a request made under the grievance procedure, EDR does not find that there would be a basis for the agency to produce this information. It is unclear how the calendars of the management chain would provide information related to the actions grieved. To the extent there would be limited information contained in these calendars that would be relevant, the materiality of this information does not justify review by the

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actually being requested about the actions grieved. Accordingly, EDR sought a different approach to determine whether any relevant documentation existed and could be provided, as described in this ruling.

<sup>11</sup> See *Grievance Procedure Manual* § 9.

<sup>12</sup> EDR also provided the agency with a lengthy list of the meetings, events, communications, etc. from which the grievant asserts he is being excluded.

<sup>13</sup> See, e.g., EDR Ruling No. 2002-215 (discussing attorney-client privilege).

grievant of the entirety of the managers' calendar information. Accordingly, EDR finds that there is just cause for the agency to not produce any calendar information sought at this time.

### CONCLUSION

For the reasons described above, EDR finds that the agency is in compliance with the document request provisions of the grievance procedure. The grievant has **five workdays from the date of this ruling** to notify the agency of his intent to advance or conclude the grievance.

EDR's rulings on matters of compliance are final and nonappealable.<sup>14</sup>

*Christopher M. Grab*  
Director  
Office of Employment Dispute Resolution

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<sup>14</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).