



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 Department of Human Resource Management  
Ruling Number 2026-5936  
August 26, 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 grievant's employer, DHRM (the "agency").

FACTS

In November 2024, the grievant submitted a grievance to the agency regarding their employment. On March 6, 2025, the grievant submitted an additional grievance. Both grievances have been consolidated for purposes of the management resolution steps and appear to raise related and/or similar issues. Although the March 6, 2025 grievance has also been the subject of multiple amendments by the grievant, the principal claims of the grievances appear to involve an alleged failure to accommodate telework under the Americans with Disabilities Act (ADA), and other related discriminatory and retaliatory claims. On May 14, 2025, the grievant "renew[ed]" requests for documentation from the agency. Having apparently received no response, the grievant sent a notice of noncompliance to the agency head on June 27, which identified the particular documents the grievant was seeking.<sup>1</sup> Again receiving no response, the grievant thereafter sought this compliance ruling from EDR to address the agency's alleged noncompliance with the document request provisions of 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 production, examples of just cause include, but are not limited to, (1) the documents do not exist,

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<sup>1</sup> The specifics of the requested documentation will be addressed below.

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

<sup>3</sup> *Grievance Procedure Manual* § 9.

(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>

#### *Documentation related to agency investigation*

The grievant's April 1, 2025 amendment to the grievances apparently prompted the agency to conduct an investigation into the allegations. This particular amendment raised the issues of alleged retaliation and "reputational sabotage" by the grievant's supervisor. The investigation has since apparently concluded. The grievant has requested to receive 1) the scope, timeline, and procedural guidelines governing the investigation, 2) all documentation generated about the investigation, 3) a list of individuals interviewed or scheduled to be interviewed and who was

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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)).

present during the interviews, and 4) the full text of all questions asked and complete responses provided.

EDR determines that the agency does not need to produce the precise requested documentation at this time. At this stage, EDR does not generally find it appropriate to produce information about the identities of witnesses and their particular responses to questions in an investigation of this sort. Furthermore, EDR does not generally support the production of all materials related to an investigation to audit or evaluate whether the investigation was handled properly. At this stage, the most relevant information is what the result of the investigation was. It would appear that the agency has indicated to the grievant that the investigation found no evidence to support the grievant's claims. However, to the extent there is a final version of any report of the investigation that documents the findings or result, the agency should provide the grievant with a copy with appropriately applicable redactions – principally to protect the privacy of those not personally involved in the grievance.<sup>10</sup> EDR would note that the investigation materials could document information that is indeed relevant to the actions grieved and our determination here could be different were the associated claims be qualified to proceed to a hearing.

*Documentation related to return to the office schedules as alternative accommodations*

The grievant has requested that the agency produce a written justification as to why each return-to-office schedule provided by the agency was chosen as an alternative accommodation rather than the grievant's requested accommodation. The grievant also seeks an explanation of why the requested accommodation was denied, the business justification for the alternative accommodation, how the alternative accommodation was deemed effective, as well as any written analyses, internal memos, or other documentation used to evaluate or justify the return to the office schedules. The grievant additionally has requested criteria, data points, or performance metrics used to evaluate the schedules as effective in supporting the essential functions of the grievant's job. However, the grievance procedure does not require an agency to create a document if the document does not exist.<sup>11</sup> EDR inquired of the agency as to whether any such documentation exists and the agency states that no such documentation exists. Accordingly, there is apparently no documentation that reflects the agency's justification or analysis of the alternative accommodation for the agency to provide pursuant to this request.

*Documentation of essential job functions*

The grievant has requested documentation identifying which essential job functions of their position can only be performed while physically in the office. The agency indicates that these functions are documented in the grievant's job description, which, EDR presumes, the grievant has access to and/or has been provided. Nevertheless, EDR would also presume that the job description does not specifically identify those functions that can only be completed physically in the office. To the extent that there is a record or other explanation that identifies these functions that has not already been provided, the grievant must be provided with this documentation. The question of what functions can only be performed in the office would appear to be an important consideration in this case and should not be unclear in the parties' interactive process. However, EDR cannot find that the agency has failed to comply with the document production provisions of

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<sup>10</sup> Va. Code § 2.2-3003(E); see *Grievance Procedure Manual* § 8.2.

<sup>11</sup> *Grievance Procedure Manual* § 8.2.

the grievance procedure if the grievant's request would require the agency to create a record that does not exist. That said, EDR would note that identification of these essential functions will likely be important information to be considered as the grievance progresses.

*Badge swipe report documentation*

According to the agency, on November 7, 2024, a report on the grievant's badge swipes was requested from the state agency with that information. The grievant has sought information regarding this report, including the date the report was approved to be requested, who made and approved the request, when the report was pulled, when the report was provided to the agency, and the number of reports pulled regarding the grievant. The agency indicates that the single existing report on the grievant's badge swipes has already been provided to the grievant. If the report has not already been provided, the agency must produce a copy of the report to the grievant. However, further information about this report, to the extent it has not already been provided or is not documented on the report itself, need not be produced. The information reviewed does not reflect that this report has resulted in any tangible action directed toward the grievant. Instead, the agency has only noted that the report documented that the grievant had allegedly not complied with a required schedule for in-office work – an issue that may very well be in dispute. Nevertheless, EDR finds that the effort required to identify whether any further documentation exists that would demonstrate the outstanding pieces of information outweighs the relevance or materiality of this information to the actions grieved.

The grievant has also sought the total number of badge reports run on the grievant since their hire date. The agency has indicated to EDR that no further such records exist. Accordingly, there is no further information to provide.

Finally, the grievant additionally seeks badge swipe statistics for other agency employees, including the dates when reports were pulled, the number of employees in the reports, the gender of each employee, whether each employee had accommodations, and the agency office area in which those employees work. Consistent with our determinations above, EDR finds that the relevance or materiality of this information is outweighed by the factors against production. This information necessarily involves information about other employees. While information about other employees can be the subject of document productions under the grievance procedure in certain situations, we do not find a basis to require the production of such information here, even in a format that would protect the identities of those other employees. The import of the badge swipe statistics appears negligible to the issues grieved. Accordingly, it is EDR's determination that this information need not be produced.

CONCLUSION

For the reasons described above, the agency is directed to adhere to the portions of this ruling addressing certain documentation that is to be provided within five workdays of the date of this ruling. Once that documentation is provided to the grievant, or by providing a reference as to when the documentation was previously provided, the grievant will have five workdays to notify the agency of their intent to advance or conclude the grievances.

EDR's rulings on matters of compliance are final and nonappealable.<sup>12</sup>

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

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<sup>12</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).