

Records Subcommittee
DHRM Records Work Group
1:00 PM Wednesday, October 28, 2015
Speaker's Conference Room, Sixth Floor
General Assembly Building, Richmond, VA
Meeting Summary

The DHRM Records Work Group of the Records Subcommittee held its first meeting on Wednesday, October 28, 2015. The purpose of the meeting was to consider the exemption for certain records held by the Department of Human Resources Management (DHRM) related to employment dispute resolution investigations, consultations, and mediations.¹ At its meeting on October 7, 2015, it was suggested to the Records Subcommittee that the subject matter of this exemption may be exempt under the general exemption for personnel records² and that this DHRM-specific exemption may not be needed. The Subcommittee asked staff and interested parties to discuss this issue and report back at the next Subcommittee meeting.

Christopher M. Grab, Director of the Office of Employment Dispute Resolution at DHRM, stated that the DHRM-specific exemption is used in handling employment disputes to keep investigations confidential, but the results are published in an anonymous form as required by other law.³ Mr. Grab pointed out that the scope of the exemption would include not only records of formal proceedings and records included in employees' permanent personnel files, but informal records as well. As examples, he stated that covered matters could include grievances, remediation, counseling employees, and other situations where DHRM provides advice. Mr. Grab informed the work group that DHRM has a new proactive program using a workplace conflict confrontation model that uses input from various parties to help provide ways to deal with workplace issues and improve skills. He stated that the records could involve records concerning employees involved in a dispute, co-workers, supervisors, and human resources personnel. In response to questions Mr. Grab confirmed that results in the form of decisions and rulings are required to be published.

Roger Wiley, an attorney representing local government and a former FOIA Council member, expressed that everything Mr. Grab described would be covered under the general personnel records exemption. He stated that local governments use the general exemption for records concerning all of the same types of issues. Dave Ress of the Daily Press, Ginger Stanley of the Virginia Press Association, and staff all agreed that such records are exempted by the general

¹ Subdivision 8 of § 2.2-3705.3 exempts "[i]nformation furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information."

² Subdivision 1 of § 2.2-3705.1 exempts "[p]ersonnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying."

³ Subdivision 7 of § 2.2-1202.1 requires that the Director of DHRM shall "[p]ublish hearing officer decisions and Department rulings."

personnel records exemption, as all of the records described are "[p]ersonnel records containing information concerning identifiable individuals."

The consensus of the work group was therefore to recommend striking the DHRM-specific exemption because the subject matter is already exempted under the personnel records exemption and because there is already a requirement to publish results. The consensus was also to include a statement to that effect in the final report for House Joint Resolution No. 96 (2014).

There being no further business, the meeting was adjourned.

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