

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 21-011

RESPONDENT: Tarrant County Criminal Court Office of Judicial Staff Counsel and Special Magistration

DATE: June 22, 2021

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Ray Wheless; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge Susan Brown

Petitioner requested all emails, texts, and instant messages sent to and from two named judges during a specific time period. Respondent informed Petitioner that no texts or instant messages responsive to the request existed. Regarding the responsive emails, Respondent withheld some, released some in their entirety, and released others with portions redacted. Respondent informed Petitioner that the withheld emails and the redacted information was either exempt from disclosure under Rule 12.5(f) (internal deliberations on court or judicial administration matters), Rule 12.5(d) (home address and family information), or Rule 12.6(c) (personnel information) or was information that was not subject to Rule 12 because it related to matters that had been before the judges (Rule 12.2(d)) or was related to a warrant (Rule 12.3(c)). Petitioner then filed this appeal. Respondent has submitted the withheld emails and redacted portions of emails for our *in camera* review.

We first must consider whether the emails at issue in this appeal are “judicial records” that are subject to Rule 12. Rule 12.2(d) defines a “judicial record” as one that is “made or maintained by or for a court or judicial agency in its regular course of business *but not pertaining to its adjudicative function*, regardless of whether that function relates to a specific case. *A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.*” (Emphasis added.)

We have reviewed the withheld emails submitted for our review and conclude that most of the emails and the portions that were redacted relate to matters that have been before the judges and relate to their adjudicative function. Therefore, they are case records, not judicial records, and they are not subject to Rule 12.¹ We are without authority to grant a petition, either in whole or in

¹ We note, however, that case records or court records which are not “judicial records” within the meaning of Rule 12 may be open pursuant to other law such as the common-law right to public access. See Rule 12 Decisions 00-001 and 00-003. We also note that the primary significance of a decision finding that a record is not subject to Rule 12 is that the Rule 12 procedures for responding to requests and appealing the denial of requests do not apply. Neither the fact that a record is not subject to Rule 12 nor a decision making this determination should be used as a basis for withholding records.

part, or sustain the denial of access to records that are not subject to Rule 12. *See* Rule 12 Decision No. 17-002.

We next address the email that contains a paystub that Respondent asserts should be withheld because it contains publicly available information or constitutes personnel information that, if disclosed, would constitute a clearly unwarranted invasion of the judge's privacy. The withheld paystub includes information such as gross and net pay, pay period, payroll deductions, and sick and annual leave balances. Rule 12.5(c) exempts "any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy." Although we are not bound by interpretations of the Public Information Act (PIA) by the Office of the Attorney General (OAG), we are guided by them, and we note that the language of the personnel records exemptions of Rule 12.5(c) and the PIA is similar. *See* Rule 12 Decision No. 08-004. Additionally, we note that the Rule 12.5(i) exemption for information considered to be confidential under common law and the comparable provision in the PIA are also similar. Based on our review of OAG's interpretation² of these provisions, we conclude that some of the paystub information consists of net pay, deductions, and other payroll information that is exempt from disclosure under Rule 12.5(c) and should be withheld. We have marked these portions on the paystub. The unmarked information, including sick and annual leave balances, should be released.³ The fact that some of this information may be publicly available does not relieve Respondent of the obligation to provide it under Rule 12.

Lastly, we have reviewed the information withheld by Respondent consisting of private phone numbers and family information. We agree with Respondent that this information is exempt from disclosure under Rule 12.5(d) and (f) and should be withheld.

In summary, we conclude that some of the records at issue in this appeal are not judicial records under Rule 12 and we are therefore without authority to review the denial of access to those records. We also conclude that some of the withheld payroll stub information is not exempt from disclosure and should be released. Lastly, we conclude that the information consisting of private phone numbers and family information is exempt from disclosure and we sustain Respondent's denial of access to that information.

² *See* Open Records Letter Ruling No. OR 2017-23773, OAG Opinion No. GA-0572 (2007), and Open Records Decision No. 600 (1992).

³ Prior Rule 12 decisions have concluded that general leave information is not exempt from disclosure. *See* Rule 12 Decision No. 11-017 and No. 19-005.