

Before the Presiding Judges of the Administrative Judicial Regions Per Curiam Rule 12 Decision

APPEAL NO.: 19-026

RESPONDENT: Montgomery County District and County Courts at Law

DATE: February 13, 2019

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Dean Rucker; Judge David L. Evans; Judge Kelly G. Moore; Judge Alfonso Charles

On October 24, 2019, Petitioner requested from Respondents “any current local rule, standing order, policy, or guideline concerning magistration or pretrial release” including but not limited to “bail schedules and criteria for personal bond.” Respondents denied the request claiming that they were not subject to release under Rule 12 because they pertain to the courts’ adjudicative function. They also stated that if the records were subject to Rule 12, they would be exempt under Rule 12.5(a) and 12.5(f). Petitioner then filed this appeal.¹

We first address whether the requested records are subject to Rule 12. A record is subject to Rule 12 if it is 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.*” (Emphasis added.) Rule 12.2(d).

We have issued several decisions concluding that a court’s internal operating procedures and local rules relate to a court’s adjudicative function even though they do not relate to a specific case because procedures addressing the processing of cases pertain or relate to a court’s adjudicative function. See Rule 12 Decision Nos. 09-006, 17-018, and 19-006. The records at issue in this appeal relate to how a court processes a defendant’s case. Petitioner cited several Rule 12 decisions which concluded that certain court procedures are subject to Rule 12. In our opinion, the records at issue in this appeal are more like those in Rule 12 Decision Nos. 09-006, 17-018, and 19-006, than those cited by Petitioner.

Petitioner also cited cases in which courts have held that records like those at issue in this appeal “are not adjudicative because they are ‘rules of general application’ that do not concern ‘decisions in [individual] cases’” and that the adoption of such rules is not an adjudicative act. We are bound by Rule 12 and the Rule 12 definition of “judicial record” does not exclude only records that concern decisions in individual cases or are the result of an adjudicative act. The Rule 12 definition of “judicial record” excludes any record that pertains to the court’s adjudicative function regardless of whether that function relates to a specific case.

Accordingly, we conclude that the records at issue in this appeal are not “judicial records”

¹ Petitioner suggests that Respondents have waived their right to claim an exemption under Rule 12 because they did not respond within fourteen days of receiving Petitioner’s requests. Rule 12 does not contain a provision like the one in the Public Information Act (Tex. Gov’t Code, Sec. 552.302) that creates a presumption that a record is subject to required public disclosure if the governmental body does not timely request a decision from the Office of the Attorney General regarding the exceptions under which the governmental body wishes to withhold records.

under Rule 12 and that we are without authority to grant the petition in whole or in part or to sustain the denial of access to the requested records. We note, however, that a decision by a Rule 12 appeal panel concluding that a document is not subject to Rule 12 is not intended to and should not be used as a justification for withholding a document. The primary significance of a decision concluding that a record is not subject to Rule 12 is that the Rule 12 procedures regarding the appeal and denial of access to those records does not apply.