

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 15-010

RESPONDENT: Judge Chris Oldner, 416th Judicial District Court
Judge John R. Roach, Jr., 296th District Court

DATE: October 7, 2015

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield;
Judge David Peebles; Judge Dean Rucker; Judge David L. Evans

Petitioner requested from Respondents “all correspondence, documents, or records wherein any person or entity asked” Respondents to seal the names of grand jurors. Petitioner also asked for records, such as memoranda, that explain how sending information to a grand juror violates state law. After failing to hear from Respondents within the time required by Rule 12, Petitioner filed this appeal. One of the Respondents asserts that he did not receive Petitioner’s original request but that he did respond to a second request sent by Petitioner after Petitioner filed his appeal. While preparing his response to this appeal, this Respondent located an email that was responsive to Petitioner’s request and he has provided it to this committee. The other Respondent asserts that he did not believe the original request required a response but that he did respond to Petitioner’s second request. This Respondent did not provide any records to Petitioner, but we cannot determine from the response he filed in this appeal whether he withheld any records or if they did not exist.

The threshold issue in a Rule 12 appeal is whether the requested records are “judicial records,” which are defined by Rule 12.2(d) as follows:

“Judicial record means a record 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.)

The administration of a court’s grand jury is part of a court’s adjudicative function. The information requested by Petitioner pertains to the grand juries of the Respondents’ courts. Accordingly, the requested information relates to the Respondents’ adjudicative function and is not subject to Rule 12.

We note, however, that though we find that the requested records are not “judicial records” within the meaning of Rule 12, they 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.

Because the records at issue in this appeal are not judicial records under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested information.