

# **Before the Presiding Judges of the Administrative Judicial Regions**

## **Per Curiam Rule 12 Decision**

**APPEAL NO.:** 15-018

**RESPONDENT:** Bastrop County Community Supervision and Corrections Department

**DATE:** February 18, 2016

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Billy Ray Stubblefield; Judge David Peeples; Judge Kelly G. Moore

Petitioner requested copies of “records used in the interview and hiring process of the Bastrop County CSCD Director position posted on July 10, 2015 including copies of all resumes, employment applications and all other information concerning job applicants while recruitment for the CSCD Director was ongoing to include scores and notes of interview panel members.” Respondent denied Petitioner’s request asserting that the information was exempt from disclosure under Rules 12.5(d) and 12.5(e). Petitioner appeals Respondent’s denial of access to the requested records arguing that her request was properly made under the Public Information Act (PIA) and that the requested records are not protected under Rule 12 of the Rules of Judicial Administration. Petitioner also asserts that she requires the requested information to justify her Equal Employment Opportunity Commission (EEOC) complaint.

In support of her position that the Respondent’s records are not protected under Rule 12, Petitioner cites Open Records Decision No. 646 (1996), an open records decision issued by the Office of the Attorney General stating that a community supervision department is not part of the judiciary for purposes of the Open Records Act (the predecessor to the PIA) and that its administrative records are subject to the Open Records Act. However, the PIA was amended in 1999 and now provides that “access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *See Tex. Gov’t Code Sec. 552.0035(a).* This amendment to the PIA followed the adoption of Rule 12 of the Rules of Judicial Administration by the Supreme Court of Texas governing access to judicial records. Additionally, previous special committees have decided that records of community supervision and corrections departments are records of the judiciary and are not subject to the PIA. *See Rule 12 Decisions Nos. 00-003 and 01-001.* We agree with the conclusion reached in these decisions.

Having determined that the requested records are records of the judiciary, we next address whether they are “judicial records” as defined by Rule 12 of the Rules of Judicial Administration. Rule 12.2(d) provides 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.”

The records requested by Petitioner are personnel records. Personnel records are administrative records of an agency that do not pertain to its adjudicative function; therefore, they are subject to Rule 12.

Though Petitioner’s only argument on appeal is that the records she requested are subject to the PIA and not protected under Rule 12, because we have determined that they are subject to Rule 12, next we review the Rule 12 exemptions to disclosure Respondent raised when it denied Petitioner’s request, Rule 12.5(d), *Home Address and Family Information*, and Rule 12.5(e), *Applicants for Employment for Volunteer Services*.

Any information related to an applicant’s home address or family information is exempt from disclosure under Rule 12.5(d) and must be redacted if this information is in a document that would otherwise be subject to disclosure. *See* Rule 12 Decision No. 10-008. Rule 12.5(e) exempts from disclosure “any record relating to an applicant for employment or volunteer services.” This exemption is broad and does not provide any circumstances in which this information may be subject to disclosure. Accordingly, we conclude that records related to applicants for the director position are exempt from disclosure under Rule 12.5(e).

The Rule 12.5(e) exemption for records related to applicants does not apply to employees. Therefore, the records related to the applicant who was hired are not exempt from disclosure under Rule 12.5(e). However, Petitioner states in her appeal that she requires the requested records to justify her EEOC complaint. Prior Rule 12 decisions have concluded that records related to a pending EEOC complaint are exempt from disclosure under Rule 12.5(j), *Litigation or Settlement Negotiations*. *See* Rule 12 Decisions Nos. 11-014 and 11-015. Accordingly, any records not exempt under the exemptions initially raised by Respondent, including records related to the applicant who was hired, are exempt under Rule 12.5(j).

For the reasons discussed above, Petitioner’s appeal is denied.