

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-024

RESPONDENT: Bexar County Community Supervision and Corrections Department

DATE: March 7, 2017

SPECIAL COMMITTEE: Judge Dean Rucker; Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge David Evans, Judge Kelly G. Moore

Petitioner requested from Respondent several categories of records regarding a defendant who is under Respondent's supervision. Examples of the requested information include the defendant's address, employment history, payment of court-ordered fines, financial statements, compliance with community service and other conditions of probation, and emails and notices sent to the defendant. Respondent did not respond to the request. Petitioner then filed this appeal.

A "judicial record" subject to Rule 12 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. *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.) Rule 12.2(d).

We have previously concluded that "records related to a probationer in a case file maintained by a probation officer who supervises probationers are records that are created, produced or filed in connection with criminal cases that have been before the court which placed the probationer under community supervision." Rule 12 Decision No. 16-016. *See also* Rule 12 Decision No. 00-003.

The records requested by Petitioner are related to a probationer and are in a case file maintained by Respondent. Accordingly, they are not judicial records as defined by Rule 12.

Because the records at issue 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 records.¹

¹ We note, however, that case records or court records that are not "judicial records" within the meaning of Rule 12 may be open pursuant to other law and to other process, such as the common-law right to public access and mandamus. *See* Rule 12 Decisions 00-001 and 00-003. The primary significance of a Rule 12 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.