

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 17-011

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

**DATE:** September 8, 2017

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

Petitioner requested eight categories of records from Respondent. Respondent provided some of the requested records and denied access to others. Petitioner specifically appeals the denial of access to copies of employee status forms and employee termination information sheets for those employees who received notices of proposed adverse action<sup>1</sup> (from January 1, 2015 to the date the records are disclosed) and retired, resigned, or were terminated from employment. Respondent has provided copies of the responsive records for our *in camera* review.

Respondent maintains that the employee status forms and employee termination sheets are exempt from disclosure under Rule 12.5(k) (records relating to the investigation of a person's character or conduct) and Rule 12.5(i) (records confidential or exempt from disclosure under other law). Rule 12.5(k) exempts from disclosure "any record relating to an investigation of any person's character or conduct, unless: (1) the record is requested by the person being investigated; and (2) release of the record, in the judgment of the records custodian, would not impair the investigation."

The submitted records indicate whether an employee resigned or was dismissed. They do not include a reason for dismissal or termination nor do they reference whether an investigation related to an employee's character or conduct occurred. Respondent asserts that the requested forms "are inextricably linked to the proposed adverse actions to terminate when requested in the manner propounded by Petitioner" limiting the scope of the request to records of those employees who received a notice of proposed adverse action and then retired, resigned or were terminated. Respondent also maintains that the release of the records "would improperly disclose the names of those investigated, and the ultimate decisions to terminate as detailed in the investigation findings" and "would also improperly disclose the names of community supervision officers whose

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<sup>1</sup> Respondent describes notices of proposed adverse action as "documents that reflect an investigation of misconduct and, or evaluation of an employee's poor performance, policies alleged to have been violated, and proposed adverse actions to be taken against the employee, including termination."

performance was investigated and evaluated and resulted in investigation findings recommending termination.” Petitioner maintains that the position that these records “are exempted from disclosure by Rule 12.5(k) stretches the exemption too far.”

To be exempt under Rule 12.5(k) the record must be one “relating to” an investigation of a person’s character or conduct. “The United States Supreme Court and the Texas Supreme Court have determined that the ordinary meaning of ‘relating to’ is ‘having a connection with or reference to’ and that this is a broad term.” *Graves v. Mack*, 246 S.W.3d 704, 709 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2007, no pet.) (citations omitted). Based on this broad interpretation and the specific request made, we agree that the requested records have a connection with or reference to an investigation of the employee’s character or conduct and we conclude they are exempt from disclosure under Rule 12.5(k).

Having found that the records are exempt from disclosure under Rule 12.5(k), we need not address whether they are exempt under Rule 12.5(i).

The denial of access to the requested records is sustained.