

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 18-005

**RESPONDENT:** State Prosecuting Attorney

**DATE:** May 29, 2018

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Sid Harle; Judge Missy Medary; Judge Dean Rucker; Judge David L. Evans

Petitioner requested copies of all emails sent and received by Respondent related to a case in which Respondent has filed an amicus curiae brief. Respondent denied the request asserting that Respondent's office is exempt from the Public Information Act (PIA) under Sec. 552.003(1)(B) and Sec. 552.0035 of the Government Code. Respondent also asserted that the requested information is exempt from disclosure under the attorney-client privilege, the work product doctrine, confidentiality requirements, and rules prohibiting trial publicity (citing Tex. Disciplinary Rules of Prof. Misconduct 1.05 and 3.07) and informed Petitioner that he could appeal the denial under Rule 12 of the Rules of Judicial Administration.

Petitioner argues that even if Respondent is exempt from the PIA as a judicial agency, Respondent has lost this exemption for purposes of Petitioner's request because Respondent acted outside her "statutory boundaries" when she filed an amicus curiae brief with the Court of Criminal Appeals. Respondent argues that it did not exceed its statutory authority in filing the amicus brief and that Petitioner's appeal should be dismissed because Petitioner has not challenged Respondent's grounds for withholding the requested information.

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.)

Petitioner requested emails related to a case in which Respondent filed an amicus curiae brief. Thus, they are case records, not judicial records subject to Rule 12. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.<sup>1</sup>

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<sup>1</sup> Because we are without authority to issue a decision regarding the denial of access to the requested records, we need not address the other issues raised by the parties.