

## **Before the Presiding Judges of the Administrative Judicial Regions Per Curiam Rule 12 Decision**

**APPEAL NO.:** 19-006

**RESPONDENT:** Coffee City Municipal Court

**DATE:** August 9, 2019

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Ray Wheless; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge Susan Brown

Petitioner submitted several requests for information to Respondent and is appealing Respondent's refusal to respond to three of them.<sup>1</sup> Respondent's denial letter informed Petitioner that the judicial system was not subject to the Public Information Act, the requested records were not "judicial records" under Rule 12, and that the court would not respond to further inquiries from Petitioner. Respondent submitted a response to this appeal but did not provide for our review copies of records responsive to the requests that were denied.

Though the judiciary is not subject to Chapter 552 of the Texas Government Code, commonly referred to as the Public Information Act, it is subject to Rule 12 of the Rules of Judicial Administration, the rule which governs public access to judicial records. In reviewing an appeal under Rule 12, we must first consider whether the requested records are judicial records subject to Rule 12. A "judicial record" is defined by Rule 12.2(d) as 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 three requests at issue in this appeal list numerous questions and categories of records regarding the court's functions and its court costs collection program. Some of the records requested by Petitioner are records that were created, produced or filed in connection with cases that have been before the Coffee City Municipal Court. Therefore, they are not "judicial records" as defined by Rule 12.2(d) and they are not subject to Rule 12. *See* Rule 12 Decisions Nos. 01-001 and 17-012. Accordingly, we are without authority to grant the petition in whole or in part or sustain the denial of access to these records.<sup>2</sup> We are providing copies of the requests at issue in this appeal to both

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<sup>1</sup> Petitioner appealed the denial of two requests dated May 23, 2019 and one request dated May 21, 2019. The documents submitted by Respondent indicate that Petitioner was provided the records requested in his May 21, 2019 request and may have been provided some of the records requested in his May 23 requests. This appeal addresses the requests that have not been complied with or addressed by Respondent.

<sup>2</sup> We note, however, that case records or court records which are not "judicial records" as defined by Rule 12 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.

Petitioner and Respondent with items that we have concluded are not subject to Rule 12 marked with an “N/A.”

Many of the items listed in Petitioner’s requests are questions or ask for summary information. Though a judicial officer does not have to answer questions or create documents to provide summary information, if the questions or requests are for information that the records custodian knows may be available from a record maintained by the records custodian, a records custodian should advise the requestor so that the requestor can amend the request to ask for those records. *See* Rule 12 Decision No. 17-002. We have placed a “Q” next to the questions or items listed on the requests at issue in this appeal that may be requesting information that may be available in records maintained by the court.

Some of the requests appear to describe records that may be subject to Rule 12. If they exist, these records should be provided to Petitioner.<sup>3</sup> These items are highlighted in yellow on the requests at issue. If Respondent is not the custodian of the requested records but can ascertain who the custodian of the records is, Rule 12.6(f) requires Respondent to forward the request to that person and notify Petitioner. *See* Rule 12 Decision No. 17-001.

Respondent also informed us that it has been difficult for her to comply with the numerous requests submitted by Petitioner because she does not currently have staff to assist her. Rule 12.6(b) requires a records custodian to respond to requests as soon as practicable, but not more than 14 days, after receiving a request. However, it also provides that a records custodian may send written notice to the requestor stating that the records cannot be provided within the required 14 days and setting a reasonable time when they can be produced or copies provided. This provision acknowledges that, due to workload and staffing levels, some requests cannot be completed within 14 days, and allows a records custodian to respond within a reasonable time. This is the appropriate response under these circumstances.<sup>4</sup>

In summary, we are without authority to grant the petition in whole or in part or sustain the denial of access to the records we have concluded are not subject to Rule 12. Respondent should review the questions submitted by Petitioner to determine if any of the records maintained by the Court contain information that may be responsive to the questions so that Petitioner may amend his request. If Respondent is not the custodian of the requested records but knows who is, Respondent should forward Petitioner’s request to that person and notify the Petitioner. Lastly, those records we have identified as subject to Rule 12 should be released to Petitioner. Because we have reached this decision without the benefit of reviewing any responsive records, we give Respondent leave to submit any records for our *in camera* review that Respondent believes are, or may contain information, that is exempt from disclosure.

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<sup>3</sup> A records custodian is not required to create a record that doesn’t exist. *See* Rule 12.4(a)(1) and Rule 12 Decision No. 16-012.

<sup>4</sup> We note that a records custodian may deny a record if the custodian makes specific, non-conclusory findings that compliance with a request would substantially and unreasonably impede the routine operation of the court or judicial agency. *See* Rule 12.8(a)(2). However, Respondent did not invoke this provision and nothing in the response submitted to this committee indicates that it should apply in this instance.