

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

**APPEAL NO.:** 19-015

**RESPONDENT:** City of Rowlett Municipal Court

**DATE:** November 22, 2019

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Dean Rucker; Judge David L. Evans; Judge Kelly G. Moore; Judge Alfonso Charles

Petitioner requested from Respondent “all records relating to the grievance that I filed against you, the subsequent ‘investigation’ of that grievance and any other correspondence relating to me and my employment with the Rowlett Police Department.” Respondent denied the request asserting that some of the requested records relate to a grievance investigation and are exempt from disclosure under Rule 12.5(k) and that some of the records are related to internal deliberations among judicial officers or members of a judicial agency on matters of court administration and are exempt from disclosure under Rule 12.5(f). Petitioner then filed this appeal. Respondent submitted a response to the appeal and provided samples of the responsive records for this committee’s *in camera* review.

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.)

We have reviewed the representative samples provided by Respondent and note that some of the records relate to Respondent’s adjudicative function. These records are not subject to Rule 12 and we can neither grant access to nor sustain the denial of access to them.<sup>1</sup>

We have also reviewed the records Respondent asserts are related to the investigation of her conduct following the grievance Petitioner filed against her. Rule 12.5(k) exempts from disclosure any record relating to an investigation of a person’s character or conduct unless the record is requested by the person being investigated. Petitioner asserts that she should be given access to the requested records because they relate to an investigation into Petitioner’s conduct, not the Respondent’s. We have reviewed the responsive records and agree with Respondent. Therefore, they are exempt under Rule 12.5(k). *See* Rule 12 Decision Nos. 13-008 and 17-024.

Lastly, one of the records submitted for our review is an email from Respondent to a councilmember that served on the “Court Governance Committee” assembled to review Petitioner’s

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<sup>1</sup> We note, however, that case records or court records which are not “judicial records” within the meaning of 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.

grievance against Respondent that discusses the court's need for a magistrate's clerk and two of the records submitted are emails to the assistant city manager that discuss issues with the preparation and processing of warrants. Respondent asserts that these records are exempt from disclosure under Rule 12.5(f) because they relate to internal deliberations of a court or judicial agency, or among judicial officers or members of a judicial agency on matters of court administration. It is our position that a record distributed to a member outside of a court or judicial agency cannot be an "internal" deliberation among judicial officers. Additionally, a councilmember does not become a member of a judicial agency for purposes of the internal deliberation exemption by serving on a grievance committee that reviews judicial officers. Accordingly, these records are not exempt from disclosure and should be released. However, one of the records discloses information about family members and should be redacted prior to release.

Accordingly, we grant petitioner access to the three emails discussed above and sustain the denial of access to the other records requested by Petitioner.