

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 20-003

RESPONDENT: Bexar County Community Supervision and Corrections Department

DATE: August 10, 2020

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

Petitioner requested from Respondent a copy of the personnel file and disciplinary records of one of Respondent's chemical dependency counselors. In response to the request, Respondent provided some of the responsive records in their entirety and some with redactions. Respondent also withheld certain records claiming they are exempt from disclosure under Rule 12.5(k) (*Investigations of Character or Conduct*) of the Rules of Judicial Administration. Petitioner is appealing the denial of access to the records withheld under Rule 12.5(k).

Petitioner asserts that Rule 12.5(k) does not apply to the withheld records because the employee is a county employee, not a judicial officer, as defined by Rule 12.2(c). Respondent states that its employees are not county employees and asserts that Rule 12.5(k) exempts from disclosure records related to the investigation of any person, not just those related to the investigation of a judicial officer.

Rule 12 of the Rules of Judicial Administration applies to records "made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function." Rule 12.2(d). Thus, records made or maintained by Respondent, a judicial agency, are subject to Rule 12.

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." Rule 12.5(k) does not contain language limiting the exemption to records related to the investigation of a judicial officer. It specifically provides that "*any* record relating to an investigation of *any person's* character or conduct" is exempt from disclosure. Several Rule 12 special committees have sustained the withholding of records related to the investigation of the character or conduct of persons who are not judicial officers. *See* Rule 12 Decisions No. 17-011, No. 17-024, and No. 17-026. We agree with these decisions and conclude that the exemption from disclosure provided by Rule 12.5(k) is not limited to records related to the investigation of a judicial officer's character or conduct.

We have reviewed the responsive records submitted by Respondent for our *in camera* review and conclude that they relate to the investigation of a person's character or conduct. Accordingly, we sustain Respondent's denial of access to these records.