

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 22-004

RESPONDENT: Justice of the Peace, Precinct 3, Travis County

DATE: June 27, 2022

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Ray Wheless; Judge Olen Underwood;¹ Judge Sid Harle; Judge Alfonso Charles

In a series of emails sent to Respondent on January 11, 2022, Petitioner requested from Respondent:

1. “. . . all of [Respondent’s] communications in regards to me, [Petitioner], including and not limited to emails, notes, letters, statements, etc. This is to include communications to and from your staff, employees, and non-staff and non-employees including the Public.”
2. “. . . the court docketing statement in [case involving Petitioner].” and;
3. “The time stamp of review by [Respondent] of all the motions filed in the [case involving Petitioner].”

Petitioner then, on January 18, 2022, sent a separate request to Respondent seeking:

1. “all of [Respondent’s] communications and information in regards to me, [Petitioner], from [various email addresses] as well as the email address you used for the 2017 Women’s March and text messages from [various phone numbers]. This is to include communications to and from your staff, employees, and non-staff and non-employees including the Public.”

Respondent in turn provided Petitioner with the entire case file for the case referenced in the January 11 request, but did not otherwise issue a formal denial for the rest of the materials sought. Petitioner then filed its petition for review, which consolidated the January 11 and January 18 requests into one petition. Petitioner clarified in email communications to Office of Court Administration staff that Respondent sent Petitioner court filings, “but not the requests [Petitioner] made.”

We first quickly consider the obvious case records materials in the petition for review — Items 2 and 3 of the January 11 request. Rule 12 governs access to judicial records. A record created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. *See* Rule 12.2(d). Such records are case records. *See* Rule 12 Decision No. 00-001. To the extent there remains a dispute related to Items 2 and 3 of the January 11 request, the special committee has no authority under Rule 12 to review the dispute and the petition is dismissed for these Items.

¹ Presiding Judge Olen Underwood did not participate in the decision.

We next consider the remaining materials sought by Petitioner — Item 1 of the January 11 email, plus the January 18 request. Respondent indicates it did not provide a formal denial for the remaining materials sought by Petitioner because it was not obligated to disclose the records under Rule 12 and, more centrally, even if Respondent were required to disclose the records there are no records responsive to the request. We considered a similar issue in Rule 12 Decision No. 17-015, wherein the respondent did not respond to a records request on the ground that it did not have records responsive to the petitioner's request. There we held that Rule 12 provides procedures for responding to requests when judicial records are *available*, but it is silent regarding the duty or procedure to follow when a requested record does not exist. It is helpful to inform requestors that the records they seek do not exist, but Rule 12 does not require it. *See* Rule 12 Decision No. 17-015. Rule 12 does not require a court to create records responsive to a request. *See* Rule 12.4(a)(1). Here, Respondent informed the special committee that it does not have any documents responsive to Petitioner's request. There being no records responsive to Petitioner's request, we need not consider Respondent's exemption claims.

For the reasons discussed above, then, the petition for the remaining materials sought by Petitioner is denied.