

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 22-008

**RESPONDENT:** Judicial Branch Certification Commission

**DATE:** August 22, 2022

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chair; Judge Ray Wheless; Judge Ana Estevez; Judge Alfonso Charles; Judge Susan Brown

Petitioner submitted to Respondent a records request for information regarding certain persons and companies engaged in civil process service. Respondent redacted the email addresses of certified process servers found in the responsive documents and then disclosed the documents to Petitioner. Petitioner submitted a follow-up request to Respondent for the redacted email addresses and Respondent replied that only personal email addresses were redacted, that it did not have the information Petitioner sought, and that all available information had been provided to Petitioner. In a follow-up message, Petitioner asked for the legal grounds Respondent relied on to withhold the email addresses. In a series of replies, Respondent referred to Rule 12.3(b) (Rule 12 inapplicable), Rule 12.5(d) (“home address and family information” exemption to disclosure), and Rule 12.5(i) (“information confidential under other law” exemption to disclosure) to justify the withholding. Petitioner then timely filed this petition for review. Respondent has provided the records at issue in this appeal to the special committee for its *in camera* review.

Rule 12 governs requests to inspect or copy “judicial records” of a “judicial agency.” In Rule 12 Decision No. 15-009, we concluded that Respondent, the Judicial Branch Certification Commission (Commission), is a judicial agency for purposes of Rule 12 and that access to its records is governed by Rule 12. In that decision, we wrote that the “purpose of the Commission is to oversee the registration, licensing and certification of court professions” and that “[i]n this role the Commission serves a basic administrative function for all the courts of Texas.” In his appeal, Petitioner appears to disagree with this conclusion and asks us to deem Respondent a “governmental body” under Government Code Chapter 552 (commonly referred to as the “Public Information Act” or “PIA”) and conclude that Respondent’s regulatory function is in fact subject to the PIA and that its regulatory records fall under that disclosure regime. We disagree with this analysis. “Governmental bodies” subject to the PIA do not include the judiciary. Government Code §552.003(1)(B). Respondent is a judicial branch agency. That it has a combination of administrative, adjudicative, and regulatory functions does not alter its status as a judicial branch agency. Thus, it cannot be subject to the PIA.

Though Respondent does not dispute it is a judicial agency subject to Rule 12, in its reply to the petition in this appeal it asserts that the *records* at issue are not subject to Rule 12 for the following reasons:

- 1) the email messages were sent as part of Respondent’s compliance function by Respondent’s investigators to some of its licensees and, therefore, they relate to the Respondent’s investigative and adjudicative functions and are not “judicial records” that are subject to Rule 12; and

- 2) Sec. 552.137 of the Government Code makes confidential an email address of a member of the public provided to a governmental body for the purpose of communicating electronically with the governmental body and, therefore, Rule 12.3(b), which makes Rule 12 inapplicable to records or information to which Chapter 552 of the Government Code is made inapplicable by certain statute, rule, or other provision of law, makes Rule 12 inapplicable to the email addresses at issue.

We first address whether the records are judicial records under Rule 12. Rule 12.2(d) defines a “judicial record” as a “record made or maintained by or for a court or judicial agency in its regular course business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case.” In Rule 12 Decision No. 15-009 we concluded that the Commission “exercises an adjudicative function when it investigates and resolves complaints filed with the Commission” and “that the records maintained by the Commission related to these complaints are not judicial records subject to Rule 12.” We have reviewed the records at issue in this appeal and find that several of them are related to complaints from the public and courts regarding its licensees and, therefore, they are not subject to Rule 12.

Next, we address Respondent’s assertion that Rule 12.3(b) makes Rule 12 inapplicable to the email addresses. Rule 12.3(b) makes Rule 12 inapplicable to records or information to which Chapter 552 of the Government Code is made inapplicable by certain statute, rule, or other provision of law. Specifically, Respondent pointed to Government Code Sec. 552.137, which makes confidential an email address of a member of the public provided to a governmental body for the purpose of communicating electronically with the governmental body. We disagree with this assertion. Sec. 552.137 does not make Chapter 552 “inapplicable” to email addresses of the public maintained by “governmental bodies” subject to the PIA; it makes them confidential and the reason it applies to those records is because they are subject to the PIA.

Lastly, Respondent asserts in its reply to the petition that in the event we were to conclude that the records at issue are subject to Rule 12, they would be exempt from disclosure under Rule 12.5(d), (i), and (k). All the records at issue in this appeal appear to be related to or stem from the Respondent’s investigation of its licensees for the purpose of monitoring their compliance with Respondent’s rules. 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.” The emails at issue in this appeal relate to investigations conducted by Respondent’s investigator into the activities or conduct of Respondent’s licensees; therefore, they are exempt from disclosure under Rule 12.5(k).

Because we have concluded that the records submitted for our *in camera* review are either not subject to Rule 12 or are exempt from disclosure under Rule 12.5(k), we need not address the other exemptions raised by Respondent.

For the reasons discussed above, the petition is denied.