

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 22-009

RESPONDENT: Tarrant County Courts

DATE: 11/21/2022

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Ray Wheless; Judge Billy Ray Stubblefield; Judge Sid Harle; Judge Alfonso Charles

Petitioner submitted a records request to Respondent on September 8, 2022 requesting all emails sent to and from a Tarrant County Criminal Court Magistrate Judge during August 2022 that contained certain “keywords,” which were the names of three individuals. Respondent replied to Petitioner, stating that there were no records responsive to the request for the name of the third individual listed. For the remaining “keywords,” Respondent informed Petitioner that the records responsive to the request pertained to the Respondent’s adjudicative function and were therefore not judicial records subject to disclosure under Rule 12. Alternatively, Respondent wrote, even if the records were judicial records they were exempt from disclosure under Rule 12.5(a) (*Judicial Work Product*). Petitioner then timely appealed the denial of access to the remaining “keyword” documents. At the request of the special committee, Respondent provided the withheld responsive documents for our *in camera* review.

The threshold issue in a Rule 12 appeal is whether the requested records are “judicial records” as defined by Rule 12.2(d). A record created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. Rule 12.2(d). Such records are case records. *See* Rule 12 Decision No. 00-001. Having reviewed the records submitted for *in camera* review, we conclude that the records sought by Petitioner are case records, not judicial records; they are records created in connection with a matter that was before a court. We are thus without authority to grant the petition, either in whole or in part, or sustain a denial of access to the records because they are not subject to Rule 12.¹

¹ Because we are without authority to issue a decision regarding the denial of access to the requested records, we do not address Respondent’s exemption claims. We note, however, that though we find that these records are not “judicial records” within the meaning of Rule 12, they 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.