

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 08-004

RESPONDENT: John McMaster, Judge, Williamson County Court at Law No. 4

DATE: October 27, 2008

SPECIAL COMMITTEE: Judge David Peeples, Chairman; Judge John Ovard; Judge Olen Underwood; Judge Stephen B. Ables; Judge Dean Rucker

Petitioner requested personnel files of the official court reporter for a county court at law from the judge of the court. The judge responded that he did not have her personnel files, but that the requester might be able to obtain them from the county's human resources officer. The judge said that he may have some communications that are responsive to the request, but because they are exempt under Rule 12 he cannot provide them. He also provided the proper notice of her right to appeal under Rule 12.

Petitioner then sent a second, more specific request to the judge, requesting specific categories of documents, including the court reporter's job applications, performance evaluations, communications with a certain party, records documenting any complaints about her, and records stating the reasons for her separation from employment. The judge responded that he did not have any job applications, performance evaluations, or communications between the court reporter and the named party. He noted that Petitioner might want to address the request for the communications between the two named individuals to those individuals or to the county information technology department. He further stated that "there may be a memo or document regarding complaints about [the court reporter] or her separation from employment," but that none of the documents could be redacted. He again provided the information about appealing under Rule 12, and Petitioner appealed.

Respondent argues that the appeal is untimely, because petitioner should have appealed within 30 days of his denial of the first request for the personnel file. Because the second request was more specific than the first, we find that it was not a duplication of the first request, and that the appeal was timely.

We first address the documents withheld by Respondent under a claimed exemption and provided to us *in camera*. He argues that they are exempt under the provisions of Rule 12.5(c), 12.5(i), or 12.5(k). One is an "employee memo" to all of the employees of the county court at law, stating the workday policies of the court and signed by the judge and the three employees, including the court reporter. Because we find the other document to be exempt, we will not describe it in this opinion.

Respondent contends the documents constitute “any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.” Rule 12.5(c). Although we are not bound by interpretations of the Public Information Act (“PIA”) by the Office of the Attorney General, we are guided by them, and the language of the personnel records exemptions of Rule 12.5(c) and the PIA is similar. Information about public employees’ job performance or the reasons for their dismissal, demotion, promotion, or resignation is not exempt from disclosure under the personnel file exception of the PIA. OAG Open Records Decision Nos. 444 at 5-6 (1986), 405 at 2-3 (1983). We find that neither the employee memo documenting workday policies for a court nor the other document at issue in this matter constitute information that would constitute a clearly unwarranted invasion of personal privacy, so they are not exempt under Rule 12.5(c).

Respondent contends the documents constitute information that is confidential under other law, but he cites no state or federal constitutional provision, statute or common law principle that would render the documents confidential, and we are not aware of any. We find that they are not exempt under Rule 12.5(i).

Respondent contends the documents constitute “any record relating to an investigation of any person’s character or conduct.” There is no indication that the employee policy memo relates to an investigation, so we assume the exemption is claimed only for the other document. We find that it relates to an investigation of a person’s character or conduct and that it is exempt under Rule 12.5(k).

As no exemption was established for the employee policy memo, we grant the petition for access to it. We deny the petition for access to the other document.

We next address the issue of the judge’s responses to the requests for the court reporter’s personnel files and for communications (including emails) between the court reporter and other individuals. The judge stated that he was not the custodian of those records, and told the Petitioner to contact the human resources department and the information technology department, respectively. The judge is the custodian of the judicial records of his court, and the court reporter in question was appointed by him as the official reporter of that court. If the personnel files and the emails of the court reporter are records of the court to which she was appointed, then the judge is the custodian of those records, even if he has to ask for help from other county employees to access them. If the judge is not the custodian, but other county employees are the custodians, then Rule 12.6(f) requires the judge to refer the requests to the other custodians and to notify the requester in writing that he has referred them to the proper custodians. The rule does not permit the judge to merely identify the custodians and require the requester to contact those custodians. In making the determination as to whether he is the custodian, the judge should consider whether he wants to determine which of the records are public and which are exempt, or whether he wants county employees not under his supervision and with little knowledge of his court’s operations to make those determinations. Although the judge’s responses did not comply with Rule 12.6(f), we are confident that the judge will reconsider and revise his response in light of this opinion.