

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 09-001

RESPONDENT: City of Houston Municipal Courts

DATE: March 17, 2009

SPECIAL COMMITTEE: Judge B.B. Schraub, Chairman; Judge John Ovard; Judge David Peeples; Judge Stephen B. Ables; Judge Kelly G. Moore

Petitioner requested “memos, memoranda, emails, interoffice correspondence, and/or notes regarding the notifying, requesting, granting, and/or denial of vacation days, time off, sick days and/or spring/summer leave approval for Berta Mejia for the past 3 years.” The Honorable Berta Mejia is the director and presiding judge of the Municipal Courts Justice Department of the City of Houston. Respondent denied Petitioner’s request claiming that the requested records are exempt from disclosure by Rule 12.3 of the Rules of Judicial Administration, and Petitioner appealed. In its response to Petitioner’s appeal, Respondent added that the requested records are exempt from disclosure “in accordance with Rule 12.3(a)(4) requiring that access to these types of records is controlled by Chapter 552, Government Code” and that Petitioner should be required to file his request pursuant to the proper statutory authority. At this committee’s request, Respondent provided for *in camera* review a sample of the documents that are responsive to Petitioner’s request.

We first address Respondent’s contention that Rule 12.3(a)(4) excepts the requested records from disclosure. Rule 12.3(a)(4) is not an exception to disclosure; rather it is a provision that makes Rule 12 inapplicable to records to which access is controlled by Chapter 552 of the Government Code, also known as the Public Information Act (PIA), or another statute or provision of law. Respondent contends that Chapter 552 controls access to the requested records and therefore, pursuant to Rule 12.3(a)(4), Rule 12 does not apply to the records. If Rule 12 does not apply to the records, this committee lacks the authority to review this appeal. We find that this is not the case. The requested records pertain to a member of the judiciary, and Chapter 552 specifically excepts the judiciary from the PIA. *See* Sec. 552.003(1)(B), Texas Government Code. Therefore, Chapter 552 does not apply to these records and consequently, neither does Rule 12.3(a)(4).

We next address Respondent’s statement that Petitioner “should be required to file his request pursuant to the proper authority.” Though access to judicial records is governed by Rule 12 of the Rules of Judicial Administration, a request for judicial records is not required to state that it is being made pursuant to Rule 12. Rule 12 should be liberally construed to achieve its purpose of providing public access to information in the judiciary consistent with the constitutional mandates of open

courts and an independent judiciary. “Citizens should be given access to judicial records regardless of whether they are able to invoke the correct ‘magic words’ to gain that access.” Rule 12 Committee Decision 05-005. Nevertheless, Petitioner correctly stated that he was making his request under Rule 12.

We next address the sample documents submitted for *in camera* review. These records appear to be leave authorization request forms completed by Judge Mejia. They pertain to a member of the judiciary and are judicial records, records that are made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. *See* Rule 12.2(d). The public is entitled to access to these records unless one of the exemptions to disclosure listed in Rule 12.5 applies. Rule 12.5(c) exempts personnel records that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Though leave forms may contain information that, if disclosed, may constitute an invasion of personal privacy, e.g. health information, we find that the sample documents do not contain such information. We also find that none of the other Rule 12.5 exceptions to disclosure apply to the sample documents. Accordingly, we grant the petition and find that Petitioner is entitled to access to the sample documents submitted to this committee by Respondent and to other records that are responsive to his request that are similar to the submitted documents.