

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 11-005

RESPONDENT: Process Server Review Board

DATE: June 13, 2011

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

The Petitioner requested a copy of the criminal history reports submitted to the Supreme Court of Texas or any judicial agency in January of 2011 by applicants for certification to serve process. The Process Server Review Board (the “Board”), the custodian of the requested records, denied Petitioner’s request claiming that they are exempt under Rule 12.5(f) (Internal Deliberations on Court or Judicial Administration Matters), Rule 12.5(i) (Information Confidential under Other Law), and Rule 12.5(k) (Investigations of Character or Conduct). Petitioner appeals the Board’s denial of access to the requested records.

We first address whether the requested records are judicial records under Rule 12 of the Rules of Judicial Administration. Rule 12 governs access to judicial agencies’ records, except for those that pertain to the agency’s adjudicative function. *See* Rule 12.2(d). Petitioner argues that the requested records pertain to the Board’s adjudicative function. We disagree. The certification of process servers is vintage court administration. *See* Rule 12 Decisions 10-001 and 07-002. Applicants for certification to serve process are required to submit their criminal history records to the Board when they apply. Rule 14.4(a)(2), Rules of Judicial Administration. Thus, we find that the criminal history records at issue in this appeal pertain to the Board’s administrative function and are judicial records under Rule 12.

Having determined that the requested records are judicial records, next we address whether they are exempt from disclosure under Rule 12.5. Article 60.06(b) of the Code of Criminal Procedure exempts criminal history records from disclosure except as authorized by federal or state law or regulation. It provides:

“Information on an individual that consists of an identifiable description and notation of an arrest, detention, indictment, information, or other formal criminal charge and a disposition of the charge, including sentencing, correctional supervision, and release that is collected and compiled by the Department of Public Safety and the Texas Department of Criminal Justice from criminal justice agencies and maintained in a central location is not subject to public disclosure except as authorized by federal or state law or regulation.”

Subchapter F, Chapter 411 of the Government Code makes criminal history information maintained by the Texas Department of Public Safety (the “Department”) confidential and provides

the circumstances under which it may be released. The Department's release to an individual of their own personal criminal history record does not alter the fact that this information is confidential and should not be disclosed to the public. Similarly, the individual's submission of this information to the Board in compliance with Rule 14.4(a)(2) does not alter the confidentiality of the information. Accordingly, we find that the requested information is exempt from disclosure under Rule 12.5(i).

We also note that criminal history records were discussed in Rule 12 Decision 07-001. Though criminal history records were not directly at issue in that appeal, the special committee acknowledged that they are a part of the application for certification to serve process and found them to be related to the investigation of an applicant's character or conduct for purposes of determining whether the applicant should be certified. We reaffirm this analysis and find that criminal history records are also exempt from disclosure under Rule 12.5(k).

Having found that the requested records are exempt from disclosure under Rule 12.5(i) and Rule 12.5(k), we need not address the other exemption raised by Respondent. The petition is denied.