

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 15-002

RESPONDENT: Travis County Justices of the Peace - Precincts 1, 4 and 5

DATE: May 12, 2015

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Olen Underwood; Judge David Peeples; Judge Dean Rucker; Judge Kelly G. Moore

Petitioner requested from Travis County's Precinct 1, 2, 4, and 5 justice of the peace courts the number of truancy cases filed annually by Austin Independent School District (AISD) in those courts against parents and students over the past five years. Petitioner also requested documents in those cases that involved parents and non-juvenile students. In one of the exchanges between Petitioner and one of the Respondents, Petitioner clarified that she would like "the number of truancy cases filed in their courts for the last five years against juvenile students, non-juvenile students and parents." Petitioner states that the Precinct 2 court responded to her request. At the time she submitted her petition, Petitioner had not heard from the Precinct 1 court, though more than 14 days had elapsed since she had submitted her request, and her request was denied by the Precinct 4 and 5 courts. In their denial letter, Respondents indicated that the number of truancy cases filed could be obtained from the Office of Court Administration's website. Petitioner then appealed.

In their response to this appeal Respondents state that the Travis County Attorney's Office responded to Petitioner on behalf of the courts explaining that the information requested was information created, produced, or filed in connection with matters before the courts and were not judicial records subject to Rule 12. Respondents also argue that even if the records are subject to Rule 12, they "do not have a system formatted to run this particular information" and "the courts do not keep track of cases specifically filed by AISD for truancy." They also state that retrieving this information would require the courts to "manually review each file, which would cause an undue burden on the courts' resources and unreasonably impede normal operations of the courts" and they assert that Rule 12 does not require the courts to "create a record, other than to print information stored in a computer."

The threshold issue in a Rule 12 appeal is whether the requested records are "judicial records," which are defined by Rule 12.2(d) as follows:

"Judicial record means a record made or maintained by or for a court or judicial agency in its regular course of business *but not pertaining to its adjudicative function*, regardless of whether that function relates to a specific case. *A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record.*" (Emphasis added.)

Petitioner's request for documents related to cases involving parents and non-juvenile defendants is a request for records made and maintained by a court that pertain to its adjudicative function; the records pertain to matters that have been or will be before a court. As such, they are not judicial records under Rule 12.2(d), and are not subject to Rule 12. Rule 12 Decision No. 03-005.

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.

We next address Petitioner's request for the number of truancy cases filed annually by AISD. After engaging in a discussion with Respondents regarding this portion of her request, Petitioner later clarified and limited her request to the "number of truancy cases filed in their courts for the last five years against juvenile students, non-juvenile students and parents" without regard to whether they were filed by AISD. Respondents noted in their reply to Petitioner's request, that this information was available on OCA's website.

Respondents are correct that this information is collected by OCA.¹ It is collected from all of the justice courts in the state as required by rules promulgated by the Texas Judicial Council. Thus, assuming the courts have filed the necessary reports with OCA, the courts should have records that contain the number of truancy cases filed in each court. Respondents argue that this information is also related to the courts' adjudicative functions and is not subject to Rule 12; we disagree. Records created by the courts and their clerks for the purpose of reporting aggregate statistical information to OCA do not pertain to the courts' adjudicative functions, the process by which they decide cases. Neither are they created, produced or filed in connection with matters that are or have been before a court. Accordingly, we find that the records created by the courts to submit to OCA indicating the number of truancy cases filed in each court are subject to Rule 12 and are not exempt from disclosure.

Regarding the documents that we have determined are not subject to Rule 12, we are without authority to grant the petition or sustain the denial of access to these records. To the extent that the reports submitted to OCA regarding justice court activity exist and contain the requested information regarding the number of truancy cases filed in each court, they are subject to Rule 12 and are not exempt from disclosure. Accordingly, the petition is granted in regards to disclosure of records that contain this information.

¹ Truancy cases are reported on OCA's reporting form as "failure to attend school cases filed."