

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-011

RESPONDENT: City of Houston Municipal Courts

DATE: June 13, 2016

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Billy Ray Stubblefield; Judge David Peebles; Judge Missy Medary; Judge Dean Rucker

Petitioner requested from Respondent the “total number of juvenile and minor cases by offense type, including but not limited to referrals by complaint, ticket, and citation referred to” Petitioner in the previous four years. The request asked that the data be disaggregated by:

- “a. whether the offense was on a school campus,
- b. race/ethnicity of the person referred,
- c. gender of the person referred,
- d. and age or date of birth of the person referred.”

Respondent provided a cost estimate for copies of “records regarding minors who have received a citation for a violation” and informed Petitioner that it does not have information regarding whether an offense was on a school campus. Respondent denied the request for information regarding juveniles citing the confidentiality provisions for records related to charges against or the conviction of a child found in Texas Code of Criminal Procedure Art. 45.0217. Petitioner then appealed.

In their response to this appeal Respondents argue that the requested records are case records and that this committee lacks jurisdiction to decide this appeal because Rule 12 does not apply to court case records. In the alternative, and without waiving their case records argument, Respondent also argues that the requested information would have to be created, which a records custodian is not required to do to comply with a request under Rule 12, and that Respondent is prohibited from releasing the requested information under Rule 12.5(i), Information Confidential Under Other Law, because it is confidential under Code of Criminal Procedure Art. 45.0217.

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.)

We agree that information from Respondent's records regarding the defendants in cases filed with Respondent are records made and maintained by or for a court that pertain to its adjudicative function and would not be subject to Rule 12. However, some of the information at issue in this appeal is information that must be reported to the Office of Court Administration (OCA) pursuant to rules adopted by the Texas Judicial Council. Assuming the courts have filed the necessary reports with OCA, these reports would contain the total number of juvenile and minor cases by offense type. Reports such as these 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. Neither are they created, produced or filed in connection with matters that are or have been before a court. *See* Rule 12 Decision 15-002. Accordingly, we conclude that the records created by Respondent or Respondent's clerk to submit to OCA indicating the total number of juvenile and minor cases by offense type filed with Respondent are subject to Rule 12.

Having found that some of the information requested by Petitioner is subject to Rule 12, we next address Respondent's argument that it is exempt from disclosure under Rule 12.5(i) because it is confidential under Art. 45.0217 of the Code of Criminal Procedure. Article 45.0217 makes confidential "all records and files, including those held by law enforcement, and information stored by electronic means or otherwise, from which a record or file could be generated, relating to a child who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral or disposition for" a misdemeanor offense punishable by fine only, other than a traffic offense. The aggregate data that is reported to OCA regarding juvenile and minor cases is a compilation of data regarding the number of cases filed and disposed. None of the information contained in these records is directly related to a child and no information regarding a child can be obtained from this data. Therefore, we conclude that the information responsive to Petitioner's request that is contained in reports submitted to OCA is not exempt from disclosure under Rule 12.5(i).

To the extent that the reports submitted to OCA regarding the total number of juvenile and minor cases by offense type filed with Respondent exist,¹ they are subject to Rule 12 and are not exempt from disclosure. The petition is granted in regards to disclosure of these reports. The remainder of the information requested by Petitioner consists of case records that are not subject to Rule 12, and we are without authority to grant the petition or sustain the denial of access to these records.²

¹ Rule 12 does not require courts, judicial agencies, or records custodians to maintain judicial records for a specific period of time. *See* Rule 12.4(a)(2).

² 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.