

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 12-012

**RESPONDENT:** Harris County Pretrial Services

**DATE:** November 12, 2012

**SPECIAL COMMITTEE:** Judge Steve Ables, Chairman; Judge John Ovard; Judge Billy Ray Stubblefield, Judge David Peeples; Judge Jeff Walker

Majority *per curiam* opinion:

Petitioner requested Harris County Pretrial Services (Respondent) to verify the race and ethnicity of “3,505 randomly selected felony cases filed by the Harris County District Attorney’s Office for the period from January 1, 2012, through April 30, 2012.” Respondent denied Petitioner’s request stating that the information was not subject to disclosure under the Public Information Act and referred Petitioner to the Administrative Office of the District Courts (AODC). Petitioner forwarded his request to the AODC. The AODC also denied Petitioner’s request claiming that Rule 12.5(a), (f) and (k) exempt the requested information from disclosure and Petitioner appealed.

Rule 12.2(d) defines a judicial record as one “made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function.” The definition specifically excludes “[a] record of any nature created, produced, or filed in connection with any matter that is or has been before a court.”

The Harris County Pretrial Services department is governed by Sec. 17.42 of the Code of Criminal Procedure; its purpose is to “gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its finding to the court before which the case is pending.” The requested records comprise part of this report. As such, they are created in connection with criminal matters before the courts and are outside the Rule 12.2(d) definition of judicial records. Because the dissenting opinion disagrees with this conclusion, we also will address the exemptions to Rule 12 raised by Respondent.

The exemption from disclosure provided by Rule 12.5(a) is very similar to the exclusion from the definition of judicial record found in Rule 12.2(d). Rule 12.5(a)’s judicial work product and drafts exemption protects “[a]ny record that relates to a judicial officer’s adjudicative decision-making process prepared by . . . any person acting on behalf of or at the direction of the judicial officer.” In discussing the applicability of the Open Records Act (now the Public Information Act) the Attorney General of Texas found that the Bexar County equivalent of the Harris County Pretrial Services department functions as an arm of the court when it conducts investigations and prepares reports

pursuant to Article 17.42. *See* Texas Attorney General Opinion No. ORD - 572 (1990). Accordingly, we find that the requested records are created on behalf of the courts in connection with criminal matters before the courts and they are exempt from disclosure under Rule 12.5(a). Because we find the records at issue are exempt under Rule 12.5(a), we need not address the other exemptions raised by Respondent.

Because the records at issue are not judicial records under Rule 12, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested records. Additionally, if the records were subject to Rule 12, they would be exempt from disclosure under Rule 12.5(a). Lastly, this decision is not unanimous and we direct the petitioner's attention to Rule 12.9(m), which provides that although our decision is not appealable, it is subject to review by mandamus.

Dissenting Opinion by Judge Jeff Walker:

Our decision in this matter should be governed by the policy expressed in Rule 12.1. The purpose of Rule 12 is to provide public access to information in the judiciary consistent with the constitutional mandate that the public interests are best served by open courts and an independent judiciary, and the rule should be liberally construed to achieve its purpose.

The majority decision is that the records are not within the definition of judicial records in Rule 12.2 and are exempt from disclosure under Rule 12.5(a) because they are created in connection with criminal matters before the courts and therefore they pertain to the adjudicative functions of the courts. A court's adjudicative function is the process by which a court decides the particular case before it. Information compiled by Respondent does not pertain to the courts' adjudicative functions. Furthermore, Respondent does not exercise an adjudicative function for the courts. Thus, the reports at issue do not relate to the courts' adjudicative decision-making process and therefore are not excepted from the definition of judicial records by Rule 12.2 or exempted from disclosure by Rule 12.5(a).

Similarly, I would find no exemption under Rule 12.5(f) for internal deliberations on court or judicial administration matters. These records do not relate to internal deliberations of a court or judicial agency; they are demographic data compiled by Respondent. Neither would I find that they are exempt from disclosure under Rule 12.5(k) as a record related to the investigation of a person's character or conduct. Information regarding race and ethnicity is not essential in the investigation of a person's character or conduct and should not be exempt under Rule 12.5(k) simply because it has been included in a report that is provided to the court for assistance in determining whether a defendant will comply with the conditions of a personal bond.

I would grant the petition for access.