

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 22-015

**RESPONDENT:** Dallas County Community Supervision and Corrections Department

**DATE:** January 23, 2023

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chair; Judge Dean Rucker; Judge Ana Estevez; Judge Sid Harle; Judge Susan Brown

Petitioner requested from Respondent a copy of Petitioner's personnel file. Respondent produced a portion of the personnel file but redacted probationer names and information from the file, withheld from the produced record copies of "chronological records," and withheld copies of Petitioner's application records and performance evaluations. Respondent explained to Petitioner it was a judicial agency and that "probationer records and information held by [Respondent] on behalf of judges are 'records of the judiciary.'" Probationer records and related information were not "judicial records" subject to Rule 12 disclosure, Respondent wrote, because specific information about probationers themselves "pertained to the judges' adjudicative, as opposed to administrative, function[.]" As for Petitioner's application records and performance evaluations, Respondent listed Rule 12.5(e) (Applicants for Employment or Volunteer Services) and Rule 12.5(i) (Information Confidential Under Other Law) exemptions to disclosure in justifying the withholding of the requested documents. Petitioner timely appealed the request denial. On appeal, Petitioner stated it did not want probationer records and information, only records and information on Petitioner.

We first address the "chronological records" withheld from Petitioner. In its reply, Respondent writes that to the extent Petitioner's personnel file records contained probationer information it redacted that information and produced the redacted documents. Respondent explains it fully withheld the "chronologicals" from Petitioner because those records detail probationer behaviors and check-ins with probation officers, which are not subject to disclosure under Rule 12 because they are not "judicial records." A "judicial record" is 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, 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." Rule 12.2(d). We have previously concluded that "records related to a probationer in a case file maintained by a probation officer who supervises probationers are records that are created, produced or filed in connection with criminal cases that have been before the court which placed the probationer under community supervision." *See* Rule 12 Decision Nos. 16-016, 16-024; *see also* Rule 12 Decision No. 00-003. We see no categorical difference between records related to a probationer kept in a case file maintained by a probation officer who supervises probationers from records kept in a probation officer's personnel file detailing probationer behaviors and check-ins with the probation officer. We are of the opinion that the "chronological records" withheld from Petitioner are not judicial records subject to Rule 12; and we are therefore

without authority to grant the petition or sustain the denial of access to these records.

We next address the withheld performance evaluations in Petitioner's personnel file. Respondent cites Government Code Section 76.006 to anchor a Rule 12.5(i) exemption claim in withholding Petitioner's performance evaluations. Rule 12.5(i) exempts from disclosure any record "that is confidential or exempt from disclosure under a state or federal constitutional provision[.]" Government Code Section 76.006(g) holds that "[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential." Respondent states that "[t]here is no authority which provides an exception for employees, current or former, who are requesting their own performance evaluations" and therefore, under Rule 12.5(i), the performance evaluations are statutorily exempt from disclosure "regardless of the identity of the individual requesting the documents."

Respondent's proffered interpretation of Section 76.006(g), taken to its logical conclusion, would result in a community supervision and corrections department employee never having access to a performance evaluation, not even at the time of the employee's evaluation. We have reviewed the legislative intent of this provision. It was designed to prevent abuse from members of the public seeking access to a community supervision and corrections department officer's performance evaluations. For these reasons, we conclude that Section 76.006(g) does not prohibit access of these performance evaluations from the person who was evaluated. Where the statute underpinning a Rule 12.5(i) exemption does not support the withholding of information, the Rule 12.5(i) exemption claim must fail. Because we conclude Section 76.006(g) does not prohibit Petitioner's access to the performance evaluations, then, Respondent's Rule 12.5(i) exemption claim fails. With no other exemptions to disclosure advanced by Respondent, we grant Petitioner access to the withheld copies of Petitioner's performance evaluations.

Lastly, we address the withheld application records in Petitioner's personnel file. In withholding the application records, Respondent pointed to Rule 12.5(e)'s exemption to disclosure for records "relating to an applicant for employment or volunteer services." Like Section 76.006(g), Rule 12.5(e)'s disclosure barrier cannot be logically read to apply to the person who submitted the application. We grant Petitioner access to withheld copies of Petitioner's application records.