

Before the Presiding Judges of the Administrative Judicial Regions
Per Curiam Rule 12 Decision

APPEAL NO.: 23-004

RESPONDENT: City of Roanoke Municipal Court

DATE: July 19, 2023

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chair; Judge Ray Wheless; Judge Dib Waldrip; Judge Sid Harle; Judge Susan Brown

Petitioner requested from the Presiding Judge of the Respondent court all emails sent to or from the Presiding Judge, at various email addresses, during a specified period, regarding a certain dismissed case and Petitioner. Petitioner sent its request to Respondent through the City of Roanoke’s Open Records and Information Center citing both the Public Information Act (“PIA”) and Rule 12 to, according to Petitioner, “ensure all bases were covered to prevent any denial of records.” According to appeal materials submitted to the special committee for review in the instant case, it appears the request was then separately forwarded to both the City of Roanoke (“City”) and to Respondent on May 1, 2023. On May 3 the City sent Petitioner a copy of a Request for PIA Opinion addressed to the Open Records Division of the Attorney General’s Office in which the City sought a ruling on withholding certain information responsive to Petitioner’s request. Specifically, the City objected to application of the Open Records Act to the requested records because the request sought municipal court records. Petitioner then subsequently reached out to counsel for the City to explain the application of the PIA and Rule 12 to Petitioner’s request. Following a series of exchanges with City’s counsel, Petitioner filed this Rule 12 appeal, agreeing with the City that the requested documents did not fall under the PIA but under Rule 12, and complaining that the City had not responded to Petitioner’s Rule 12 request. Notice of the appeal was sent to counsel for the City, who submitted a reply to the petition. The day after the City sent its reply, the Presiding Judge of the Respondent court submitted its own reply to the petition. The Presiding Judge explained that Petitioner’s request was received on May 1, but because “it was difficult to determine” which set of law Petitioner relied upon — the PIA or Rule 12 — in making the request, the City determined it was prudent to first seek an Attorney General ruling on the matter. In an effort to be open and transparent, the Presiding Judge wrote, he had concluded that the requested documents should be released and had instructed staff to provide Petitioner with responsive documents. In a follow-up reply, Petitioner indicated she did not agree with the Presiding Judge that all responsive records had been released, and stated she wished to proceed with her appeal.

At the outset, we must address two points raised by Respondent. First, in its reply to the petition, the City asserts the appeal is not properly before the committee because the request was not sent directly to the judge, the proper records custodian under Rule 12, and the petition did not include the records custodian’s denial of Petitioner’s request for records. However, Petitioner sent her request through an online system maintained by the City that indicates requests for court records may be submitted through that system and the judge did ultimately respond to the request.

Additionally, Petitioner provided us a copy of what she believed to be the denial of her request and no other reply had been provided to her within the 14-day window required for a reply under Rule 12.6(b). Because Rule 12 is to be liberally construed to achieve its purpose and the judge received the request, we are proceeding with this appeal. (*See, e.g.*, Rule 12 Decision No.11-009, wherein the Special Committee proceeded with an appeal involving a request that was not sent directly to the judge.) Second, Respondent expressed concern regarding under which law Petitioner was seeking the requested records – the PIA or Rule 12. Rule 12 is one of the Rules of Judicial Administration adopted by the Supreme Court of Texas. Under Rule 12.6(b), a judge’s obligation to comply with Rule 12 is triggered upon receipt of a request for judicial records. The request is not required to state that it is being made pursuant to Rule 12. Requestors “should be given access to judicial records regardless of whether they are able to invoke the correct ‘magic’ words to gain that access.” *See* Rule 12 Decisions Nos. 05-005, 09-001.

Petitioner’s first request sought all emails sent to or from the Presiding Judge of the Respondent court, at various email addresses, regarding State of Texas v. [Petitioner], which was dismissed on January 30, 2023. Rule 12 governs access to judicial records, and Rule 12.2(d) defines a “judicial record” as one that is “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.” Additionally, “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.” Such records are case records. *See* Rule 12.2(d) and Rule 12 Decision No. 00-001. Petitioner’s first request, by its own terms, would be for a record “created, produced, or filed” in connection with a matter on Respondent’s docket, would be a “case record” and not a “judicial record,” and therefore would not be subject to Rule 12. The special committee has no authority under Rule 12 to issue a decision regarding access to records that are not subject to Rule 12, and this portion of the appeal must be dismissed.

Petitioner’s second request sought all emails sent to or from the Presiding Judge of the Respondent court, at various email addresses, regarding Petitioner after January 30, 2023 through April 26, 2023. In a reply to the petition, the Presiding Judge of the Respondent court stated that he provided Petitioner with the requested emails. Petitioner disagrees with this statement. Where judicial records responsive to a Rule 12 request are provided to a requestor, Rule 12 is satisfied. We direct the Presiding Judge of the Respondent court to confirm in writing to the Petitioner and the special committee that all responsive *judicial* records (rather than *case* records) have in fact been provided to Petitioner. If there are unreleased judicial records, Respondent should release them or, alternatively, provide a basis to the special committee for the withholding. If no such additional judicial records exist and Respondent confirms this to be the case, the appeal is dismissed.