

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 16-016

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

**DATE:** November 29, 2016

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Olen Underwood; Judge Billy Ray Stubblefield; Judge Missy Medary; Judge Dean Rucker

Petitioner made three separate requests for information to Respondent. Respondent provided the requested information except for 15 case files, copies of audits and practice audits of caseload carrying probation officers, and redacted portions of certain responsive emails. Petitioner then filed this appeal.

First, we address the requested case files. Petitioner requested the case files of all of the cases that were listed in a notice of proposed adverse action that was sent to Petitioner by Respondent. The requested case files are created and maintained by Respondent's employees for individual probationers. A prior special committee has determined that "records of the names and addresses of probationers are records created, produced, or filed in connection with criminal cases that have been before the court which placed the probationer under Article 42.12 community supervision." *See* Rule 12 Decision No. 00-003. We are of the opinion that all of the 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. Therefore, these records are not judicial records that are subject to Rule 12 and we are without authority to grant the petition nor sustain the denial of access to these records.

The second set of records at issue in this appeal are the audits and any practice audits of the caseload carrying probationers. Respondent withheld the requested audit information claiming it is confidential under Tex. Gov't Code Sec. 76.006(g) and must be withheld under Rule 12.5(i), Information Confidential Under Other Law. Section 76.006(g) provides that "a document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential." Respondent asserts that these audits are used as evaluations and appraisals of employee's case management and supervisory duties. We agree that these records are documents that evaluate the performance of a community supervision officer. Accordingly, for purposes of responding to Rule 12 requests, these records are confidential under Sec. 76.006(g) and should be withheld under Rule 12.5(i).

The last set of records at issue in this appeal are emails of a few of Respondent's employees "regarding the Bexar County Probation Officers Association or any predecessor employee organization or union, or regarding political activities of BPOA or any predecessor employee organization, or regarding political activities of the San Antonio AFL-CIO, within the past three years." Respondent states that it provided all responsive emails but redacted certain email addresses and portions of the emails that are exempt under Rule 12.5(c), Personnel Information, 12.5(d), Home Address and Family Information, 12.5(f), Internal Deliberations on Court or Judicial Administration Matters, and 12.5(k), Investigations of Character or Conduct. Petitioner asks this special committee to conduct an *in camera* review of several of the redacted emails to determine if the withheld information is in fact exempt from disclosure. Petitioner states that it does not take issue with the other redacted emails because it is clear that the information being withheld consists of private email addresses.

We have reviewed the emails and conclude that the redacted portions of the emails contain personal email addresses, which Petitioner has stated he does not take issue with, and contain information related to an investigation of a person's character or conduct and personnel information and are exempt from disclosure under Rule 12.5(c) and (k). Two of the redactions are not exempt from disclosure and have been noted and provided to Respondent so that they may be released to Petitioner.

Lastly, Petitioner notes that Respondent is erroneously withholding some of the requested information based on their conclusion that the requested information is not subject to Rule 12. Petitioner asks this special committee to affirm that it does not sustain Respondent's denial of access to records on the basis that a record is not subject to Rule 12. As has been stated in many previous Rule 12 decisions, the fact that a special committee concludes that requested records are not "judicial records" within the meaning of Rule 12 does not mean that they are exempt from disclosure. The records 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. The primary significance of a Rule 12 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.

In summary, we conclude that the requested case file records are not subject to Rule 12 and therefore, regarding those records, we are without authority to grant the petition or sustain the denial of access to them. We also conclude that the audit and practice audit information is confidential under Tex. Gov't Code Sec. 76.006(g) and is therefore exempt from disclosure under Rule 12.5(i). Lastly, we conclude that the information redacted from the emails that has been challenged by Petitioner is exempt from disclosure except for the two items that we have noted and provided to Respondent for release.