

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 16-017

RESPONDENT: Bexar County Community Supervision and Corrections Department

DATE: November 30, 2016

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

Respondent denied Petitioner's request for probationers' case files and copies of audits and practice audits of caseload carrying probation officers. Petitioner then filed this appeal and requested that it be expedited. The request for expedited appeal is granted.

The records at issue in this appeal are identical to some of the records at issue in Rule 12 Decision No. 16-016. In that decision, this special committee concluded 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 and are not judicial records that are subject to Rule 12. Accordingly, we are without authority to grant the petition nor sustain the denial of access to the probationers' case files at issue in this appeal.

In Rule 12 Decision No. 16-016, this special committee also concluded that audits and practice audits of caseload carrying probationers are documents that evaluate the performance of a community supervision officer and that, for purposes of responding to Rule 12 requests, they are confidential under Texas Government Code Sec. 76.006(g) and should be withheld under Rule 12.5(i).

Lastly, Petitioner asks this special committee to affirm that it does not sustain Respondent's denial of access to records to which Rule 12 does not apply. 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 requested 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).