

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 10-002

RESPONDENT: City of Corpus Christi

DATE: April 5, 2010

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge John Ovard, Judge Olen Underwood, Judge David Peebles, Judge Kelly G. Moore

Petitioner requested from the City of Corpus Christi (the “City”) “[a]ny communication between Deanie King and senior city staff, supervisors or City Council member between July 20 until today, Dec. 8.” The City provided Petitioner with an itemized statement of estimated charges and requested a deposit or bond before responding to the request. Petitioner paid the estimated charge and was told that the records would be available at a later date. On January 4, 2010, the City provided Petitioner with responsive documents and informed her that it was waiving the charges and refunding her deposit because the total cost amounted to less than five dollars. The City also informed Petitioner that portions of the requested information were being withheld because they were exempt from disclosure pursuant to Rule 12.2(d) and 12.5(a), (d), (f), (h), and (i) of the Rules of Judicial Administration¹, and Petitioner appealed.

Petitioner asks this committee to determine whether the records she requests are subject to Rule 12 rather than the Public Information Act (PIA) and, if they are subject to Rule 12, whether the exemptions raised by the City cover the requested records. Petitioner also contends that, if the records are subject to Rule 12, the City did not respond in a timely manner and it requests that sanctions be issued against the assistant city attorney who handled the response.

We must first decide if Rule 12 applies to the records that are the subject of this appeal. Rule 12 governs requests to inspect or copy judicial records. Rule 12.2(d) provides, in pertinent part:

“Judicial record means a record 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.”

Deanie King is a City of Corpus Christi municipal court judge. Thus, a record created by Judge King in the regular course of her court’s business is a judicial record that is subject to Rule 12 so long as it does not pertain to her court’s adjudicative function. This is also true of records created by Judge King that are maintained for her court by the City.

The records at issue consist of several emails sent by Judge King to another municipal court judge and one letter sent by the judge to the City’s mayor and council members. Assuming

¹ Unless otherwise provided, all references to Rule 12 are to Rule 12 of the Rules of Judicial Administration.

that the communications between Judge King and the other municipal court judge do not pertain to the court's adjudicative function, they are judicial records. We will review the documents provided to us by the City to ensure that they do not pertain to the court's adjudicative function and then determine whether any Rule 12 exemptions apply.

The letter from Judge King to the mayor and city council is different from the other communications because it was sent to persons outside of the court. If the record is part of the body of records that the City maintains for the court, it is a judicial record. But the City is in the unique position of also maintaining records for City staff and officials and, in this case, the request was actually made to the City, not to the court or Judge King. If the letter provided to us for our review was obtained from one of the recipients of the letter or if the City is maintaining the record on behalf of one of the recipients, that record would be a record of the City and would not be subject to Rule 12. This is a fact question that must be determined by the City. For purposes of this decision, we will assume that the City is responding on behalf of Judge King's court and that the letter provided to us was in the possession of the court or was being maintained by the City on behalf of the court.

Having determined that the records at issue are judicial records as defined by Rule 12, we reviewed the documents and found that several of them contain information that is exempt from disclosure under Rule 12.5 (d) (home address or family information), 12.5(f) (internal deliberations on court or judicial administration matters), 12.5(h) (judicial calendar information), and 12.5(i) (information confidential under other law). In instances where the City identified more than one exemption, we noted whether all or only some of the exemptions applied. In one instance the City identified an incorrect exemption and we noted the appropriate exemption on the document. Also, some of the documents contain both exempt and nonexempt information. In those instances, rather than withhold the documents in their entirety, the exempt information should be redacted. *See* Rule 12.6(d). We have noted on the documents whether they should be completely withheld or redacted.

The City also contends that one of the emails is not a judicial record as defined by Rule 12.2(d) because it pertains to a pending case in the municipal court. As stated above, records related to a court's adjudicative function are not judicial records. Because the email appears to be related to a pending case, it is not a judicial record and this committee can neither grant nor deny access to this record. *See* Rule 12 Decision 00-003.

Lastly, Petitioner requests that sanctions be issued against the City's attorney for failing to respond timely to Petitioner's request. The City, relying on provisions of the PIA (Gov't Code Sec. 552.263), argues that it had 14 days from the date from which Petitioner provided payment for the records to provide the records. The City believes that since Rule 12 provides that a records custodian, in the absence of a cost prescribed by statute, may rely on the costs prescribed by rules promulgated by the Office of the Attorney General in the Texas Administrative Code and those rules authorize the collection of a deposit or bond as does the PIA, then a person can also rely on the provisions of the PIA that extend the required time to comply with a request from the date that a bond or deposit is made. We do not agree with this analysis. Rule 12 authorizes a person responding to a Rule 12 request to use the rules promulgated by the OAG to determine the cost of records; it does not provide an alternate procedure for handling a request. The City should have notified Petitioner that it would be unable to provide the records within 14 days and provided a reasonable date and time for complying with or denying the request under Rule 12.6(b)(2). However, the City does not appear to have knowingly failed to comply with Rule 12 as required for

sanctions under Rule 12.10. Additionally, under Rule 12.10 sanctions can only be issued against the records custodian, and the custodian of the court's records is the presiding judge of the court, not the City's attorney.

Accordingly, the appeal is granted in part and denied in part and the City is instructed to provide to Petitioner the portions of the records that this committee has found to be subject to disclosure under Rule 12.