

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 21-010

RESPONDENT: City of Progreso

DATE: June 1, 2021

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

Petitioner emailed a request for information to Respondent's city secretary that was addressed to the judge of the City of Progreso Municipal Court. The request was for the following information:

- 1) all records held by the City of Progreso Municipal Court (the "Court") related to cases currently pending against a certain individual;
- 2) all records held by the Court related to all cases filed in the Court by any law enforcement agency which involved the impounding of a vehicle during a time period specified by Petitioner, including records regarding arrests connected to the impounding of a vehicle;
- 3) all records held by the Court related to the setting, accepting, or modification of bail, bond, or release on own recognizance related to a criminal charge resulting from a police encounter or stop in which a vehicle was impounded during the time period specified by Petitioner;
- 4) all records of payment of a bail or bond related to an arrest in which a vehicle was impounded during the time period specified by Petitioner; and
- 5) all records of impounded fees, including storage fees, for the specified time period.

Petitioner asserts that Respondent took over a month to respond to the request. Petitioner also maintains that arrangements were made for Petitioner to collect the responsive records, but when Petitioner arrived, Respondent informed Petitioner that the records would not be released because Respondent had requested an opinion from the Office of the Attorney General regarding a separate request submitted by Petitioner. Petitioner then filed this appeal.

Rule 12 governs requests to inspect or copy judicial records in the custody of a records custodian of a court, judicial officer, or judicial agency. *See* Rule 12 Decisions No. 05-001 and No. 17-023. Respondent is not a court, judicial officer, or judicial agency. Accordingly, Rule 12 does not apply to Respondent, and we are without authority to address Respondent's denial of access to records.

We note, however, that though Petitioner emailed the request to Respondent's city secretary, the letter was addressed to the judge of the City of Progreso Municipal Court (the "Judge"). Thus, it appears that Petitioner intended to request the records from the Judge. But Rule 12.6(a) requires that requests for records be sent to the judge as the records custodian,¹ not to a court clerk or other agent for the judge. A judge's obligation to comply with Rule 12 is triggered upon actual receipt of a request. *See* Rule 12.6(b). Nevertheless, even if the request had been sent directly to the Judge, for the reasons discussed below, we conclude that the requested records are not "judicial records" subject to Rule 12.

A "judicial record" is defined by Rule 12.2(d) as 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. *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.*" (Emphasis added.) To the extent that the Court maintains records that are responsive to the request, they are records related to cases that have been or are before the Court. Thus, they are not "judicial records" as defined by Rule 12.2(d) and they are not subject to Rule 12. *See* Rule 12 Decisions Nos. 00-001 and 17-005.

Because Respondent is not subject to Rule 12 and the requested records are not judicial records under Rule 12, we are without authority to address the denial of access to the requested records.²

¹ The records of a court with one judge are in the custody of the judge of the court. The records of a court with more than one judge are in the custody of the presiding judge or chief justice of the court. *See* Rule 12.2(e)(1) and (2).

² Case records or court records which are not "judicial records" within the meaning of Rule 12 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. Additionally, the primary significance of a decision concluding 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.