

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 17-016

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

**DATE:** October 17, 2017

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Mary Murphy; Judge Olen Underwood; Judge David L. Evans; Judge Kelly G. Moore

Petitioner requested from Respondent information related to the notice of proposed adverse employment action delivered to Petitioner by Respondent. Respondent provided some of the requested information but denied Petitioner's request for "all evidence against me" asserting it was exempt under Rule 12.5(k) of the Rules of Judicial Administration. Petitioner filed this appeal and requested an expedited review so that he could prepare his appeal of the proposed adverse employment action.<sup>1</sup> Respondent has provided for this committee's *in camera* review two documents as a representative sample of the responsive records.

Rule 12.5(k) exempts from disclosure "any record relating to an investigation of any person's character or conduct, unless: (1) the record is requested by the person being investigated; and (2) release of the record, in the judgment of the records custodian, would not impair the investigation." The records at issue in this appeal concern the investigation of Petitioner's conduct. Thus, Respondent should not deny Petitioner's request unless, in the judgment of the records custodian, releasing the records would impair Respondent's investigation.

Petitioner argues that he cannot impair the investigation because the investigation has already been completed. Respondent asserts that its policies allow the chief probation officer ten days after an appeal hearing to further investigate a matter before providing an employee a final notice of adverse action and that the chief probation officer has determined that he will interview additional witnesses identified by Petitioner during the appeal hearing. Respondent argues that releasing the responsive information would impair its continuing investigation by placing witnesses at risk for intimidation or influence. Respondent bases this argument on information gathered at the appeal hearing that Petitioner had learned the identity of a witness and reports that Petitioner had contacted some of his coworkers to discuss the allegations of his misconduct.

Though Rule 12.5(k) places the responsibility of determining whether the release of records related to the investigation of a requestor's conduct might impair an ongoing investigation, this

---

<sup>1</sup> We agreed to expedite the matter but note that the information provided by Respondent in this appeal indicates that Petitioner's appeal hearing on the proposed adverse employment action has already occurred.

determination is subject to review in the Rule 12 appeal process. We have reviewed the documents provided by Respondent and are unable to conclude that their release would interfere with an investigation. Additionally, based on the information provided to this committee, we are unable to conclude that the witnesses might be at risk for intimidation or influence by Petitioner and therefore impair the investigation.

Respondent also argues that releasing the responsive records may have a chilling effect on the reporting of future whistleblower claims and complaints of harassment and discrimination. We recognize that there are protections in place for the confidentiality of some complaints, e.g. statements of victims of sexual harassment (*see Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. – El Paso 1992, writ denied). However, we are not aware of and Respondent did not raise any specific provisions that would protect the records at issue in this appeal from disclosure.

Accordingly, the petition is granted.