

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 18-006

RESPONDENT: Justice of the Peace, Precinct 2, Place 2, Dallas County

DATE: September 10, 2018

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Missy Medary; Judge Dean Rucker; Judge David L. Evans, Judge Kelly G. Moore

Petitioner requested from Respondent copies of newsletters mailed by Respondent during a specific time period, information regarding the cost of preparing, printing, and mailing the responsive newsletters, the database of addresses the newsletters were sent to, and time sheets and documentation reflecting the work hours of a specific person employed by Respondent. Respondent provided copies of the responsive newsletters. Respondent denied the request for cost information noting that an itemized cost list did not exist and denied the request for the database of addresses noting that “a sheet of labels was the only thing provided and making copies was not authorized.” Respondent denied access to the requested time sheet information stating it was exempt from disclosure under Rule 12.5(c).

In his response to the appeal, Respondent does not clarify whether he has any records that are responsive to the request and does not provide any additional information supporting the denial of access to the requested information.

We first address the denial of access to information regarding the costs of the mailed newsletters, such as postage, printing, paper, and envelope costs. Records custodians are not required to create documents to respond to requests. *See* Rule 12 Decision No. 18-001. However, when a judicial officer does not have records requested by the public, the judicial officer should promptly ascertain who the records custodian of the records is and, if the judicial officer can ascertain who the records custodian is, the judicial officer should forward the request to that person and notify the requestor. *See* Rule 12.6(f). Also, if a judicial officer knows the information may be contained in other types of records maintained by the judicial officer, the judicial officer should notify the requestor of the records so that the requestor may have the opportunity to amend the request. *See* Rule 12 Decision No. 17-002. A judicial officer has no other obligation under Rule 12 when a requested record does not exist or when the judicial officer is not the custodian of the requested records.

Respondent explained to Petitioner that he was unable to provide the address database because “a sheet of labels was the only thing provided and making copies was not authorized.” As stated above, Respondent is not required to create documents that do not exist. With the limited information provided to us, we are unable to tell whether the labels were created by a person or entity that is subject to Rule 12. If the records do exist and the records custodian is subject to Rule 12, Respondent should have referred the request to that person.

Respondent also maintains that the requested information for time sheets and documentation reflecting the hours worked by a certain employee is exempt from disclosure under Rule 12.5(c). This provision exempts any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy. Prior Rule 12 decisions have concluded that this type of information is not exempt from disclosure under Rule 12.5(c) because the public has a right to know when judicial staff are working and when they are on leave and the release of this type of information does not result in an unwarranted invasion of personal privacy. *See* Rule 12 Decisions No. 11-016 and 11-017. Therefore, time sheets and other records documenting the hours worked by the named employee are not exempt from disclosure and should be released.

Lastly, Respondent expressed concerns about the rationale behind a portion of the request. We remind Respondent that all requests should be treated uniformly. *See* Rule 12.6(h). Additionally, just as Rule 12.6(g) prohibits a records custodian from inquiring as to the purpose of a request, a records custodian's response to a Rule 12 request for records should not be influenced by suppositions regarding the requestor's reasons for making a request. To do otherwise would be inconsistent with Rule 12's purpose.

In summary, regarding the requested cost records and address labels, if they exist but Respondent is not the custodian of those records, Respondent should attempt to ascertain who the custodian of the records is and, if identified, forward the request to them. Records reflecting the time an employee works are not exempt from disclosure and should be released.