

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 25-001

RESPONDENT: El Paso Council of Judges

DATE: March 17, 2025

SPECIAL COMMITTEE: Judge David Evans, Chair; Judge Ana Estevez;
Judge Ray Wheless; Judge Robert Trapp; Judge Dib Waldrup

Petitioner requested from Respondent “all copies of the Council of Judges Agenda and Minutes for the years 2023 and 2024.” Petitioner also requested to be copied on all future agendas so it could be aware of matters being discussed and could attend meetings as needed. Respondent, through counsel, presented to Petitioner two grounds in denying Petitioner’s request. First, Respondent claimed the requests covered records exempt from disclosure under Rule 12.5(f) of the Rules of Judicial Administration (*Internal Deliberations on Court or Judicial Administration Matters*). Second, Respondent claimed that because the records were exempt, compliance with the request would “substantially and unreasonably impede the [Respondent’s] routine operation.” In Respondent’s opinion, this made the records exempt under Rule 12.8(a). Petitioner timely appealed the denial of access to the records requested and challenged the grounds on which Respondent withheld the agendas and minutes. In a reply to the petition, Respondent reiterated its two grounds for denying access to the records. Respondent also provided to the special committee a set of sample records for its consideration in reviewing the exemption claims. Petitioner submitted a supplemental petition for review containing an agenda for the Council of Judge’s January 2025 meeting that appears to have been sent to him as an attachment to an email from “Court Master Calendar” using an epcounty.com email address. The email also contained a Zoom link for invitees to attend the meeting.

We first address Respondent’s claim that “compliance with this request would substantially and unreasonably impede [Respondent’s] routine operations.” Respondent offered the special committee no evidence concerning staffing or workload that would support Respondent’s conclusion that the request would substantially and unreasonably impede operations. It is Respondent’s burden to show the request would substantially and unreasonably impede operations. Based on the materials submitted to it, the special committee observed that these meetings occur approximately once a month and the average length of the minutes is four pages. Rule 12 contemplates that some requests may take longer to process than others and authorizes judicial officers to set a reasonable date and time to produce the information. *See* Rule 12.6(b)(2). Based on the number and length of documents, the special committee believes these documents could have been produced within a reasonable extension of the initial 14-day period without impeding operations. Such an extension would be based on the staffing and workload of Respondent. The request in and of itself does not support a finding that it would impede Respondent’s routine operations.

We next address Respondent's denial of access to the agendas. Respondent asserts they are exempt from disclosure under Rule 12.5 because they pertain to "internal deliberations on court or judicial matters." We disagree. For the deliberation exemption to apply, there must in fact have been a deliberation. Documents *discussing* the development of an agenda may contain information that is exempt, but a final agenda does not. We have reviewed the samples provided to us and conclude they are not exempt from disclosure under this exemption. If Respondent believes some of the items on the submitted agendas or other agendas responsive to the request are exempt on other grounds, we give Respondent leave to raise them.¹

We next address the withholding of the requested meeting minutes under Rule 12.5(f) (*Internal Deliberations on Court or Judicial Administration Matters*). The email sent to Petitioner containing the agenda and meeting Zoom link puts into question whether all or part of the Council of Judges meetings are open to members of the public. Although we agree with Respondent that some of the requested records or the information contained within them may be exempt from disclosure, we cannot apply a blanket "internal deliberation" exemption if these meetings were attended by persons who are not part of the Council of Judges or its supporting staff.

Accordingly, we grant Respondent 30 days leave from the date of this opinion to confirm that the meetings are closed to the public, and if they are closed, to identify the portions of the meeting minutes provided to the special committee for review that are exempt from disclosure and the appropriate exemption.²

¹ Because Respondent is not subject to the Open Meetings Act it is not required to post an agenda prior to meeting or to give the public any notice regarding the meeting. However, this does not absolve Respondent from its obligation to produce judicial records under Rule 12 of the Rules of Judicial Administration.

² We remind Respondent that Rule 12 exists to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. Because of this, Rule 12 is to be liberally construed to achieve its purpose. *See, e.g.*, Rule 12.1 and Rule 12 Dec. Nos. 08-002, 11-009, and 23-004. Moreover, a record is not exempt in its entirety just because portions of it are exempt from disclosure. The proper response is to redact and disclose. *See* Rule 12 Dec. Nos. 11-009, 15-015.