

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 00-001

RESPONDENT: J. B. Marshall, Jr., Presiding Judge, Pflugerville Municipal Court

DATE: February 4, 2000

SPECIAL COMMITTEE: Judge Pat McDowell, Judge Olen Underwood, Judge B. B. Schraub, Judge Darrell Hester, Judge Ray D. Anderson

The applicant is an individual who has requested that the Pflugerville Municipal Court allow him to view traffic citations for research he is conducting regarding “how the city of Pflugerville does business regarding traffic citations.” The presiding judge of the municipal court has refused access to the traffic citation records on the ground that they are exempt under the provisions of Rule 12.5(d) of the Rules of Judicial Administration. The applicant has filed a petition for review of this denial of access.

The threshold issue in a Rule 12 appeal is whether the records are “judicial records,” which are defined by Rule 12.2(d) as follows:

“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. 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.”

Traffic citation records pertain to the municipal court’s adjudicative function and are created, produced, and filed in connection with matters that are or have been before the municipal court. Thus, they are not judicial records within the meaning of Rule 12, and we cannot decide the question of whether they are exempt from disclosure. Accordingly, we can neither grant the petition in whole or in part nor sustain the denial of access to the requested record. Nevertheless, we will explain the duties of a court in relation to public access to case records of this type.

As previously discussed, Rule 12 is a new rule designed to define public access to judicial records, which are those records *not* related to a court’s adjudicative function. Other records, which *are* related to a court’s adjudicative function, are subject to other rules or laws. For purposes of this discussion, we will call those records “court records.”

Rule 76a of the Texas Rules of Civil Procedure governs public access to civil court records. It provides that civil court records “are presumed to be open to the general public.” They may be sealed only upon a showing of “a specific, serious and substantial interest which clearly outweighs . . . this presumption of openness; [and] any probable adverse effect that sealing will have upon the general public health or

safety; [and that] no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.”

Public access to criminal court records, such as those at issue here, are governed by common law and constitutional law. The common law right to public access was articulated by the United States Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978), as follows:

“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents. In contrast to the English practice, . . . American decisions generally do not condition enforcement of this right on a proprietary interest in the document or upon a need for it as evidence in a lawsuit. The interest necessary to support the issuance of a writ compelling access has been found, for example, in the citizen’s desire to keep a watchful eye on the workings of public agencies”

The constitutional law relating to public access to criminal court records was summarized by the court in *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.–San Antonio 1990), as follows:

“The public’s right to public trials under the First and Fourteenth Amendments to the United States Constitution includes a presumption that judicial records will be open to inspection by the press and public. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 1312 (1978). This presumption of openness may be overcome by a countervailing interest, such as the defendant’s right to a fair trial, but the reason for closure or sealing must be apparent and clearly articulated. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 581, 100 S.Ct. 2814, 2829-30 (1980); *Houston Chronicle Publishing Co. v. Hardy*, 578 S.W.2d 495, 499 (Tex. App.–Corpus Christi, 1984), *cert. denied*, 470 U.S. 1052, 105 S.Ct. 1754 (1985).”

In *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992), the court conditionally granted a writ of mandamus against a trial court which had prohibited a newspaper from publishing the identity of a rape victim which had already been disclosed in an indictment, a motion in limine, and a charge to the jury. The court held that once they are filed with the court, court records become public records.

Although court records are not records covered by the Public Information Act (formerly “Open Records Act”), Texas Government Code §552.001 *et seq.*, several attorney general open records letters have discussed the issue, and found a right to public access. OR99-1825 (traffic citations are subject to disclosure under common-law right to copy and inspect court records and statutory law governing municipal courts); OR99-2611 (personal information such as place of employment, work and home telephone numbers of the accused which are found in traffic citations maintained by police department are not exempt from disclosure); OR99-0766 (traffic citations maintained by city are subject to Public Information Act); OR99-3698 (distinguishing between records maintained solely by municipal court and those also maintained by city).

For the reasons stated, this review committee can neither grant the petition in whole or in part nor sustain the denial of access to the requested records.