

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 18-001

RESPONDENT: Judge Justin Sanderson, 60th District Court

DATE: April 13, 2018

SPECIAL COMMITTEE: Judge Stephen B. Ables, Chairman; Judge Mary Murphy;¹ Judge Billy Ray Stubblefield; Judge Sid Harle; Judge Kelly G. Moore

Petitioner requested the following from Respondent: 1) copies of all emails sent and received from Respondent's government email accounts during a specific time period, 2) copies of all emails sent and received from the government email accounts of two of Respondent's employees during a specific time period, 3) copies of all emails sent and received from Respondent's personal email accounts during a specific time period regarding a specific lawsuit, 4) copies of all emails sent and received from Respondent's personal email accounts during a specific time period that reference specific named individuals, 5) copies of all emails sent and received from Respondent's government email accounts and those of Respondent's employees during a specific time period regarding a specific lawsuit, 6) copies of all emails sent and received from Respondent's and Respondent's employees' government email accounts during a specific time period that reference specific named individuals, 7) copies of all text messages sent and received from Respondent's personal and government cell phones that reference specific named individuals during a specific time period, 8) copies of Respondent's telephone logs, bills, or records showing all incoming and outgoing calls on specific dates, 9) copies of any communications referencing, pertaining to, or memorializing any communications between Respondent or Respondent's employees and a federal bankruptcy court and specific named individuals regarding a specific case during a specific time period, and 10) a copy of a subpoena return regarding a specific witness in a specific case. Respondent did not respond to Petitioner's request; Petitioner then filed this appeal.

We first address the requests numbered 1 and 2 above. Respondent maintains that the requests for all of Respondent's emails and Respondent's employees' emails for a specific time period are overly broad and burdensome. We agree with Respondent. However, when such requests are made, we recommend that records custodians inform requestors so that they may narrow their requests or provide additional information so that the records they are seeking can be identified. This approach is consistent with the policy of Rule 12 that it be liberally construed to achieve its purpose to provide public access to information in the judiciary. Accordingly, Petitioner should be allowed the opportunity to narrow his request or provide additional information so that Respondent can determine if any records responsive to the request exist.

¹ Presiding Judge Mary Murphy did not participate in the decision.

In his response to this appeal, Respondent included for our review emails that he believes may be responsive to Petitioner's request number 1. Respondent informs us that he identified these emails based on the other requests made by Petitioner regarding a specific case and specific individuals. We have reviewed the emails Respondent has submitted and conclude that they all pertain to court cases.

Rule 12 applies to the denial of access to judicial records. Rule 12.2(d) defines a "judicial record" as one that is "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.) Because all the emails submitted by Petitioner in response to request number 1 relate to specific cases, they are not judicial records under Rule 12. *See* Rule 12 Decisions Nos. 15-017, 11-004, and 00-001.

We next address the requests numbered 3, 5, 9 and 10. These requests are also for records that pertain to a specific case. Accordingly, if any records exist that are responsive to these requests, they are not subject to Rule 12.²

Regarding request number 6, we have reviewed the responsive emails submitted for our review and conclude that they also pertain to a specific case and are not subject to Rule 12.

Respondent has provided for our review a copy of telephone bills responsive to Petitioner's request number 8 for telephone logs, bills, or records. Telephone bills are judicial records and must be released unless a Rule 12 exemption applies. *See* Rule 12 Decision Nos. 17-004 and 11-009. Respondent did not raise any exemptions from disclosure for our consideration and we are unable to conclude that any apply based on our review of the submitted records.

Lastly, Respondent has asserted that he does not have any records responsive to numbers 3, 4, 7, and 10. A records custodian is not required to create a document in response to a request.³ *See* Rule 12.4(a)(1) and Rule 12 Decision No. 16-012. Therefore, Respondent has no further obligation regarding this request.

In summary, Petitioner should be given the opportunity to narrow his request or provide additional information to Respondent regarding his requests numbered 1 and 2 above. The records responsive to numbers 1, 3, 5, 6, 9, and 10, if any, pertain to court cases. Therefore, they are not judicial records as defined by Rule 12 and we are without authority to grant the petition in whole or in part or sustain the denial of access to these records. Respondent does not have any records responsive to numbers 3, 4, 7, and 10; therefore, no further action regarding these requests is required under Rule 12. The records responsive to request number 8 are not exempt from disclosure. Accordingly, Petitioner's appeal regarding the denial of access to the records responsive to request number 8 is granted.

² We note that Respondent has asserted in his response that he does not have any records responsive to numbers 3 and 10.

³ We also note that if records responsive to numbers 3 and 10 existed, they would not be subject to Rule 12 because they are requests for case records.