

# Before the Presiding Judges of the Administrative Judicial Regions

## Per Curiam Rule 12 Decision

**APPEAL NO.:** 18-007

**RESPONDENT:** 317<sup>th</sup> District Court

**DATE:** January 7, 2019

**SPECIAL COMMITTEE:** Judge Stephen B. Ables, Chairman; Judge Dean Rucker; Judge David L. Evans; Judge Kelly G. Moore; Judge Susan Brown

Petitioner requested access to “all records, documents and communications in possession of the 317<sup>th</sup> District Court, including government emails used by [the] 317<sup>th</sup> Court and employees, and notes, faxes, or letters to or from the 317<sup>th</sup> District Court ... that are to or from the following people or organizations, and/or contain or are in reference to any of the following people or organizations below (including results of email searches of the following).” The list of people and organizations included approximately 18 individuals and one entity. Petitioner also requested “browser history and internet search history” for any computer in possession of or used by the 317<sup>th</sup> District Court and two named individuals. The time-period for both sets of requested records spanned 31 months. Respondent denied Petitioner access to the requested information and Petitioner filed this appeal.

The threshold question in a Rule 12 appeal is whether the requested records are “judicial records” subject to Rule 12. Respondent’s denial letter<sup>1</sup> defines “judicial records” and concludes that the requested information is not subject to Rule 12 but gives no information about the nature of the responsive information. Based on our review of the request and the denial letter, we are unable to conclude that the requested records are not judicial records subject to Rule 12; therefore, we must assume that the requested information is subject to Rule 12.

Respondent’s denial letter asserts that Petitioner’s request is an impediment to Respondent’s office and is unreasonable, overly broad, and burdensome. We agree that the request for all records, documents, communications, notes, faxes or letters from, to, or about certain individuals and organizations is overly broad. However, when a request is overly broad, the appropriate response is to give the requestor an opportunity to narrow the scope of the request or provide additional information so that the records the requestor seeks can be identified. *See* Rule 12 Decision No. 18-001. This 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 to narrow his request or provide additional information so that Respondent can determine if any records responsive to the request exist.

We next address Petitioner’s request for “browser history and internet search history” on computers used by two named individuals during a 31-month time-period. Records of Internet browsing or searches made in the regular course of a court’s or judicial agency’s business are subject

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<sup>1</sup> Respondent did not submit a response to Petitioner’s appeal.

to Rule 12 and must be released unless they are exempt from disclosure under Rule 12.<sup>2</sup> After reviewing the information available to us in this appeal, we are unable to conclude that the requested browser and internet search history is exempt from disclosure. Accordingly, if the requested information exists, Petitioner should be permitted access to this information.<sup>3</sup>

In summary, Petitioner should be given the opportunity to narrow or clarify the portion of his request that is overly broad. Petitioner's request for access to internet search history is granted. Because we have reached this decision without the benefit of reviewing the responsive records, we give Respondent leave to raise any exemptions before releasing the responsive records.

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<sup>2</sup> We recognize that some Internet searches may be personal in nature and not conducted in the regular course of a court's or judicial agency's business. Information regarding these searches would not be subject to Rule 12.

<sup>3</sup> We note that records custodians are not required to create documents to respond to requests.