Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.:   16-010

RESPONDENT: Judge Michael McSpadden, 209th District Court

DATE: June 7, 2016

SPECIAL COMMITTEE: Judge Steve Ables, Chairman; Judge Mary Murphy; Judge Billy Ray Stubblefield; Judge Dean Rucker; Judge David L. Evans

Petitioner requested from Respondent an electronic spreadsheet of all of Respondent's computer log-on and log-off times from January 1, 2014 through January 1, 2016. Respondent denied the request claiming the information is exempt under Rule 12.5(b), Security Plans. Respondent stated that release of the information could allow someone to "infer patterns that could jeopardize a judge's security" and "predict with certainty the exact time each day when a judge arrives and leaves the courthouse." He also stated that the release "could make the judiciary's computer network vulnerable to cyber attacks." Petitioner then filed this appeal.

Our initial observation is that the requested information is not the type that judicial officers ordinarily make or maintain in the regular course of business and we question whether it exists or would need to be created. Rule 12 does not require a records custodian to create a record other than to print information stored in a computer. *See* Rule 12.4(a)(1). It is our understanding that a report of a computer user's log-on and log-off times is not one that is simply printed from information stored in the user's computer. It requires a person versed in information technology operations to create such a report accessing the information from the computer's operating system or, if part of a network, from the network's servers. Such a report would not simply be produced by printing information stored in a computer. For these reasons we conclude that if the report does not exist, it does not have to be created.

If the report does exist, it may be exempt from disclosure under Rule 12.5(b) as argued by Respondent, but we cannot make this determination without reviewing it. Accordingly, if the report exists, we give Respondent leave to submit the report for our *in camera* review to ensure that it is not exempt from disclosure. If Respondent chooses not to submit the report for our review, it should be released to Petitioner.