

FILED

UNITED STATES COURT OF APPEALS

JUL 06 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

IN RE APPLICATION FOR
EXEMPTION FROM ELECTRONIC
PUBLIC ACCESS FEES BY
PUBLIC.RESOURCE.ORG,

No. 15-80056

ORDER

Before: THOMAS, Chief Judge

Public.Resource.Org has filed a motion, pursuant to 28 U.S.C. § 1913, requesting a 12-month exemption from user access fees for the Public Access to Court Electronic Records system (“PACER”).¹ Petitioner seeks this exemption so that it can: (1) conduct an audit of privacy violations in public court filings; and (2) transfer the files it obtains through the exemption to a non-commercial Internet site where they would be publically accessible at no cost.

Petitioner posits that this project is designed to balance the goals of increasing public access to information about the courts and protecting individual privacy.

¹ Petitioner also asks this Court to grant similar exemptions for the District Courts of Idaho, Nevada, Oregon and Western Washington. Such requests should be filed directly with those Courts.

According to the guidance contained in the Electronic Public Access Fee Schedule, posted on the U.S. Courts web page, effective December 1, 2013 (and issued in accordance with 28 U.S.C. §§ 1913, 1914, 1926, 1930, 1932), in order to grant exemptions, courts must find that petitioners seeking an exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information; and that individual researchers requesting an exemption have shown that the defined research project is intended for scholarly research, that it is limited in scope, and that it is not intended for redistribution on the Internet or for commercial purposes.

Public.Resource.Org's requests an exemption for unlimited access to all court documents for twelve months and proposes that the files it accesses would then be posted on the Internet and freely accessible to the public. Petitioner's motion does not comply with the requirements of the Electronic Public Access Fee Schedule for granting a fee exemption.

First, the research study is not limited in scope in that it seeks *unlimited access to all court documents for twelve months*. The amount of information sought is unprecedented in scope, far beyond the relatively modest access previously granted pursuant to academic requests. Further, the research methodology is not adequately described or defined.

Second, the petitioner seeks to acquire documents for ultimate redistribution to the public on the Internet, a purpose which is outside the permissible scope for granting an exemption. In addition, the petitioner has not provided assurance as to how individual privacy would be protected through public publication of files ostensibly containing inappropriately disclosed private information.

Third, at the direction of the Standing Committee on Rules of Practice of the Judicial Conference of the United States, the Federal Judicial Center, 28 U.S.C. § 620, is currently engaged in research similar to that outlined in petitioner's motion. Although it is premature to predict the outcome of such a study and whether its research will ultimately be made publicly available, this Court concludes that Public.Resource.Org's proposed audit appears duplicative of research now underway.

Accordingly, the motion for an exemption from PACER user access fees related to Court of Appeals documents is DENIED.