

Before the Presiding Judges of the Administrative Judicial Regions

Per Curiam Rule 12 Decision

APPEAL NO.: 24-014

RESPONDENT: Killeen Municipal Court

DATE: November 4, 2024

SPECIAL COMMITTEE: Judge Stephen Ables, Chair; Judge Robert Trapp; Judge Missy Medary; Judge Ben Woodward; Judge Ana Estevez

Petitioner requested from Respondent “a copy of all search warrants and correspondent affidavits authored by” an affiant with the Killeen Police Department from 2015 to present. Respondent stated it had no responsive records for the years 2015 – 2020 and 2023 – 2024, and would disclose to Petitioner the responsive warrants for the year 2022. Respondent would allow Petitioner to inspect the disclosed affidavits in the clerk’s office at set appointment time. Respondent informed Petitioner that it was denying access to the responsive warrants for the year 2021. Respondent cited Rule 12.5(i), which exempts from disclosure any record confidential or exempt from disclosure under other law. To support its exemption claim, Respondent pointed to Section 552.108, Government Code, which Respondent stated exempted from disclosure under the Public Information Act “information that, if released, could interfere with ongoing investigations or prosecutions.” Respondent informed Petitioner that the prosecution and investigation related to the withheld warrants remained open and pending, and that state and federal law enforcement had expressed “a strong preference that these records are not disclosed until they have completed their review and preparation.” Petitioner timely appealed the denial of access and, in its petition for review, argued that Article 18.01(b), Code of Criminal Procedure, made the search warrants public information. Petitioner also contested the applicability of the Rule 12.5 exemption cited by Respondent and complained that the Rule 12.6(c) location offered for inspection of the disclosed records was not convenient nor “truly publicly accessible.” Respondent did not submit a reply to the petition.

Rule 12 governs access to “judicial records,” those records “made or maintained by or for a court or judicial agency in its regular course of business *but not pertaining to its adjudicative function.*” See Rule 12.2(d) (emphasis added). Rule 12 makes judicial records other than those covered by Rule 12.3 (*Applicability*) and Rule 12.5 (*Exemptions from Disclosure*) open to the general public for inspection and copying during regular business hours. See Rule 12.4. Under Rule 12.3, records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by common law, court order, judicial decision, or “another provision of law,” are not subject to Rule 12. See Rule 12.3(c)(2) and Rule 12 Dec. No. 23-009.

While the special committee has considered Rule 12.3(c)(2)’s inapplicability provision in the context of arrest warrants,¹ the issue is one of first impression for the special committee in the

¹ See Rule 12 Dec. No. 23-009.

context of search warrants. Chapter 18 of the Code of Criminal Procedure governs search warrants and Article 18.01(b), cited by Petitioner in support of its argument that the search warrant is available for public inspection, reads as follows: “Except as otherwise provided by this code, the [sworn] affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate’s clerk shall make a copy of the affidavit available for public inspection in the clerk’s office during normal business hours.” Article 18.011(a) allows a judge to order the affidavit sealed under certain circumstances. *See* Art. 18.011(a), Code Crim. Proc. For the “correspondent affidavits” sought by Petitioner, then, it is clear that Chapter 18 of the Code of Criminal Procedure triggers Rule 12.3(c)(2)’s inapplicability provision because access to these records is controlled by “another provision of law.”

The same cannot be said for the *search warrant* itself, though, as Chapter 18 is silent on when the search warrant becomes accessible public information. Nonetheless, Article 18.01 does provide that a search warrant is a “*written order*, issued by a magistrate and directed to a peace officer,” that cannot issue for any purpose “unless sufficient facts are first presented *to satisfy the issuing magistrate* that probable cause does in fact exist for its issuance.” *See* Art. 18.01(a), (b), Code Crim. Proc. (emphasis added). Put another way, prior to issuing a search warrant (an order) a magistrate must receive and review facts and determine probable cause exists to support the search warrant. The reviewing of facts, applying the law to facts, and making of a determination or decision in a given matter presented to a court are adjudicative acts, and Article 18.01 thus implicates a court’s “adjudicative function” in issuing a search warrant. *See* Rule 12.2(d) and Rule 12 Dec. No. 10-001. Therefore, the search warrant itself pertains to the court’s adjudicative function and a search warrant falls outside of Rule 12.2(d)’s definition of “judicial record.”

To summarize, a search warrant is not a “judicial record” under Rule 12 because it pertains to the court’s adjudicative function and Rule 12.3(c)(2) makes Rule 12 inapplicable to the correspondent affidavits attached to the search warrant because access to those documents is controlled by “another provision of law.” Because the search warrant is not subject to Rule 12 and because Rule 12 is inapplicable to the remaining records in question, we need not address Respondent’s exemption claims. Accordingly, the special committee can neither grant the petition in whole or in part nor sustain any denial to the requested records, and the petition is denied.