



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2020

The Honorable Elmer C. Beckworth, Jr.
Cherokee County District Attorney
Post Office Box 450
Rusk, Texas 75785

Opinion No. KP-0335

Re: Whether a search warrant and “warrant return” are subject to disclosure under the Public Information Act, or any other law or regulation of the State of Texas, when there is an ongoing criminal investigation (RQ-0344-KP)

Dear Mr. Beckworth:

You tell us the Rusk Police Department recently executed a search warrant on a residence in connection with an ongoing criminal investigation.¹ Subsequently, a local attorney requested from the district clerk’s office “a copy of the supporting affidavit for the . . . warrant as well as the search warrant itself, and a copy of the return and inventory.” Request Letter at 2. The district clerk released the supporting affidavit pursuant to article 18.01(b) of the Code of Criminal Procedure but asked your office to seek clarification on whether the law requires disclosure of the warrant itself, the warrant return, and the inventory under the circumstances.² *Id.* Accordingly, you ask whether specific provisions of the Public Information Act or any other state law or regulation subject a search warrant and warrant return to disclosure in the face of an ongoing criminal investigation. *Id.* at 1.

We note at the outset that the context for your question involves search warrants and related documents in the possession of a district clerk. A district clerk holds court case records on behalf of the courts served by the clerk. *See* TEX. GOV’T CODE § 51.303(b) (directing the clerk, among other duties, to record “the acts and proceedings of the court” and the “executions issued and the returns on the executions”); *see also* TEX. CODE CRIM. PROC. art. 2.21(a) (providing that in a criminal proceeding the clerk of the district court shall “receive and file all papers” and “issue all process” of the court, among other responsibilities). As such, the district clerk holds a search warrant, warrant return, and related inventory list on behalf of the judiciary. The Public

¹*See* Letter from Honorable Elmer C. Beckworth, Jr., Cherokee Cty. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 2 (Apr. 1, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0344KP.pdf> (“Request Letter”).

²Article 18.01(b) directs a magistrate’s clerk to make a copy of the supporting affidavit available for public inspection “when the search warrant for which the affidavit was presented is executed.” TEX. CODE CRIM. PROC. art. 18.01(b).

Information Act, about which you primarily ask, expressly excludes the judiciary. *See* TEX. GOV'T CODE §§ 552.002(a)(1) (defining the public information to which it applies as that which is “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body” (emphasis added)), 552.003(1)(B)(i) (providing that for purposes of the Act, a governmental body “does not include . . . the judiciary”); *see also* Tex. Att’y Gen. ORD-671 (2001) at 2–3 (noting the information a district clerk collects pursuant to Government Code section 51.303(b) is “collected, assembled, or maintained for the judiciary and is not public information under the Act”). The Public Information Act states that “[a]ccess to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” TEX. GOV'T CODE § 552.0035(a).

The Texas Supreme Court adopted Rule of Judicial Administration 12.4, which generally makes judicial records open to the public for inspection and copying. TEX. R. JUD. ADMIN. 12.4(a), *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. F app. However, this general right does not apply to judicial records “covered by Rule[] 12.3,” which includes “records or information relating to [a] . . . search warrant.” *Id.* 12.4(a), 12.3(c). Instead, “access to [such records or information] is controlled by . . . state or federal court rule, including a rule of civil or criminal procedure, appellate procedure or evidence[,] or . . . common law, court order, judicial decision, or another provision of law.” *Id.* 12.3(c). Accordingly, we consider your question in the context of the Code of Criminal Procedure.

Chapter 18 of that code governs the search warrant process. *See generally* TEX. CODE CRIM. PROC. arts. 18.01–.24. “A ‘search warrant’ is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate . . .” *Id.* art. 18.01(a); *see also id.* art. 18.04 (listing the requisites for a sufficient warrant). An applicant for a search warrant must file a sworn affidavit setting forth substantial facts establishing probable cause to the magistrate’s satisfaction before the warrant may issue. *Id.* art. 18.01(b). “On searching the place . . . the officer executing the warrant shall present a copy of the warrant to the owner” or the person in possession of the place, if they are present. *Id.* art. 18.06(b). Before taking any property, the officer must “prepare a written inventory” of it, endorse it with his name, and give it to the owner or possessor. *Id.* If neither the owner nor the possessor is present when the warrant is executed, the officer must “leave a copy of the warrant and the inventory at the place.” *Id.* When the officer returns the search warrant to the magistrate, the officer must “state on the back of the same, or on some paper attached to it, the manner in which the warrant” was executed and “also deliver to the magistrate a copy of the inventory of the property taken.” *Id.* art. 18.10. Other than the entitlement of the owner or possessor of the place searched to a copy of the warrant and written inventory, the Legislature did not directly address what right anyone else might have to those particular documents, or to the warrant return the officer delivers to the magistrate. Instead, chapter 18 provides only that the sworn affidavit supporting a search warrant generally becomes “public information when the search warrant for which the affidavit was presented is executed.” *Id.* art. 18.01(b).

A court’s “primary goal in construing a statute is to give effect to the Legislature’s intent.” *Shinogle v. Whitlock*, 596 S.W.3d 772, 776 (Tex. 2020). A court “must always consider the statute as a whole rather than its isolated provisions” and “not give one provision a meaning out of

harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone.” *Id.* at 776–77. But in considering the statute as a whole, a court must also give “effect to each provision so that none is rendered meaningless or mere surplusage.” *TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 74 (Tex. 2016). In article 18.01(b), the Legislature addressed the public nature of an affidavit supporting a search warrant but not the warrant itself, the return, or the inventory. By contrast, in the related context of arrest warrants, the Legislature expressly included the warrants themselves in its declaration of the “public information” to which a magistrate must provide access when the arrest warrant is executed. *See* TEX. CODE CRIM. PROC. art. 15.26 (“The *arrest warrant, and* any affidavit presented to the magistrate in support . . . is public information” (emphasis added)). Ordinarily, “[w]hen the Legislature expresses its intent regarding a subject in one setting, but . . . remains silent on that subject in another, [a court] generally abide[s] by the rule that such silence is intentional.” *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 497 (Tex. 2013). However, the Legislature provided a mechanism for a magistrate to temporarily seal a search warrant affidavit, in which it stated that an order to block disclosure of the affidavit to the public “may not . . . prohibit the disclosure of information relating to the contents of a search warrant, the return of a search warrant, or the inventory of property taken pursuant to a search warrant.” TEX. CODE CRIM. PROC. art. 18.011(d)(1). Thus, while not expressing its intent regarding the status of a search warrant in the same way as for an arrest warrant, the Legislature could not have been more clear that the contents of the search warrant, warrant return, or inventory may not be blocked. *Id.* Given this express language in article 18.011(d)(1), a court would likely conclude that a search warrant, warrant return, and property inventory are subject to public disclosure by a district clerk.

S U M M A R Y

The Public Information Act does not apply to a district clerk holding a search warrant, warrant return, and property inventory on behalf of the judiciary. Instead, the Code of Criminal Procedure governs public access to such documents.

Based on language in Code of Criminal Procedure article 18.011(d)(1) that a court order temporarily sealing a search warrant affidavit “may not . . . prohibit the disclosure of information relating to the contents of a search warrant, the return of a search warrant, or the inventory of property taken pursuant to a search warrant,” a court would likely conclude that such documents are subject to public disclosure by a district clerk.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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