



**ELMER C. BECKWORTH, JR.**  
DISTRICT ATTORNEY

**JONATHAN RICHEY**  
**ANDREW C. WEBER**  
**WILLIAM J. MAYNARD III**  
ASSISTANT DISTRICT ATTORNEYS

**MARVIN ACKER**  
INVESTIGATOR

April 1, 2020

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Attorney General Opinion Request  
Cherokee County District Clerk's Office  
Cherokee County District Attorney's Office

Pursuant to 402.042 and 402.043 of the Texas Government Code, this office requests a formal written opinion on the following questions:

**Questions:**

According to Art. 18.02 (b) of the Texas Code of Criminal Procedure the affidavit for a search warrant becomes public information when the associated search warrant is executed. From this point forward, the magistrate's clerk is required to make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

This rule does not "seemingly" require the public disclosure of the "warrant" or the "warrant return".

When there is an ongoing criminal investigation, is the "warrant" and "warrant return" associated with an affidavit subject to disclosure under Art. 18.02 of the T.X.C.C.P, subject to disclosure requirements under the Texas Public Information Act, or any other law or regulation of the State of Texas?

Alternatively, are the "warrant" and "warrant return" associated with the affidavit exempt from disclosure under the Texas Public Information Act by the Judiciary Exception under §552.003(B)(i).

**DISTRICT ATTORNEY  
CHEROKEE COUNTY, TEXAS**

1<sup>ST</sup> FLOOR, COURTHOUSE  
P.O. BOX 450  
RUSK, TEXAS 75785  
903/683-2573  
Fax 903/683-2309



**LOIS GARNER**  
OFFICE ADMINISTRATOR &

**SHASTA BAILES**  
LEGAL SECRETARY

**KELLY GARRELL**  
**DARLENE COX**

**REGINA BROWN**  
CRIME VICTIM COORDINATOR

**RQ-0344-KP**

**FILE# ML-48756-20**

**I.D.# 48756**

**Background:**

Rusk Police Department initiated a criminal investigation in early March of 2020. As part of this investigation, the Rusk Police Department executed a search warrant on a residence on March 10, 2020. This investigation is still ongoing.

On March 19, 2020, a local attorney's office requested a copy of the supporting affidavit for the March 10, warrant as well as the search warrant itself, and a copy of the return and inventory. (Attached)

The Cherokee County District Clerk's office mailed the Warrant affidavit to the Attorney's office via normal mail.

After reviewing the pertinent statutes and judicial precedents it is unclear whether the disclosure of the warrant is required, or whether it can be prevented as there is an ongoing criminal investigation under §552.108(a) of the Texas Public Information Act which can exempt certain items from open records disclosure.

The District Clerk has requested the District Attorney's Office seek clarification on this matter from the Attorney General's Office.

Please contact me if I can be of further assistance. Thank you for your guidance in this matter.

Sincerely,



Elmer Beckworth  
District Attorney  
Cherokee County

AW  
Enclosures

CC: The Clerk of District Court Allison Dotson  
Cherokee County District Clerk's Office  
135 S. Main St.  
2<sup>nd</sup> Floor  
Rusk, Texas 75785

Boren and Mims PLLC  
216 W. Erwin St. Ste 300A  
Tyler, Texas 75702