

Before the Presiding Judges of the Administrative Judicial Regions
Per Curiam Rule 12 Decision

APPEAL NO.: 23-009

RESPONDENT: Justice of the Peace, Precinct 2, Morris County

DATE: October 11, 2023

SPECIAL COMMITTEE: Judge Stephen Ables, Chair; Judge David Evans; Judge Ana Estevez; Judge Robert Trapp; Judge Missy Medary¹

On February 22, 2023, Petitioner requested from Respondent “copies of the affidavit for arrest and arrest warrant” for a certain individual, “as well as supporting documents submitted by law enforcement.” According to Petitioner’s petition, Respondent communicated with Petitioner regarding the request but ultimately did not release any responsive records or deny Petitioner’s request. Petitioner filed this appeal approximately half a year after the initial request was made. Respondent did not provide a reply to the petition.

Rule 12 makes “judicial records”² other than those covered by Rules 12.3 and 12.5 open to the general public for inspection and copying during regular business hours. *See* Rule 12.4. Rule 12.3 provides that records or information relating to an arrest or search warrant or a support affidavit, access to which is controlled by common law, court order, judicial decision, or — of utmost importance for the instant appeal — “another provision of law” are not subject to Rule 12.³ *See* Rule 12.3(c)(2). Under Article 15.26, Code of Criminal Procedure, an arrest warrant and any affidavit presented to a magistrate in support of the issuance of the warrant is public information and must be made available by the magistrate’s clerk for public inspection in the clerk’s office. Thus, access to the records that Petitioner seeks is controlled by Article 15.26. Because access to the records sought by Petitioner is controlled by “another provision of law,” Rule 12 cannot apply.

Accordingly, because Rule 12 is inapplicable to the records in question the special committee can neither grant the petition in whole or in part, nor sustain any denial to the requested records. The petition is dismissed.

¹ Judge Medary did not participate in the special committee’s decision.

² A “judicial record” is a record “made or maintained by or for a court or judicial agency in its regular course or business but not pertaining to its adjudicative function.” *See* Rule 12.2(d).

³ We note that Rule 12.3 contains another subsection similar to this one that makes Rule 12 inapplicable to records or information to which access is controlled by “Chapter 552, Government Code, or another statute or provision of law.” Because the documents sought by Petitioner specifically relate to the inapplicability provision contemplated in Rule 12.3(c)(2), it is the focus of our analysis.