

EIGHTH JUDICIAL DISTRICT POLICY AND PROCEDURES REGARDING PUBLIC ACCESS TO SEARCH WARRANTS PRIOR TO FILING OF CRIMINAL CHARGES

There are times when the public, including the media, may wish to view search warrants issued by a judicial officer of this Judicial District, or affidavits in support of same, and related documents, prior to the filing of criminal charges. In some cases charges may never be filed. In others, they may be filed days, weeks, or months after execution of the search warrant. This blanket order clarifies whether such documents may be viewed by the public. This order also applies to applications and orders under Rule 41.1, C.R.Crim. P., orders for the production of records under C.R.S. 16 - 3 - 301.1, and similar evidence-gathering applications and orders.

This directive does not apply to search warrants, affidavits in support of search warrants, and related documents, after the filing of criminal charges. In such cases these documents are a part of the criminal case, and access to same is to be handled as such by the clerk or other custodian.

This policy is based on the following public policy considerations. It is the policy of Colorado, generally, that records, including criminal justice records, be open to the public. The public has a legitimate interest in being informed about search warrants issued and served. There are times, however, in order to avoid compromising an ongoing investigation, endangering officer safety, endangering informants, or for other reasons, when these items should not be made available to the public.

Search warrants may not be covered by the Colorado Open Records Act, C.R.S. 24 - 72 - 201 et. seq., as they are not "public records", being "criminal justice records". See C.R.S. 24 - 72 - 202(6)(b)I. They are, however, covered by the Colorado Criminal Justice Records Act, C.R.S. 24 - 72 - 301 et. seq. Search warrants and affidavits in support of search warrants are criminal justice records as defined by C.R.S. 24 - 72 - 302(4) in that they are papers or other documentary materials made, maintained, or kept by a criminal justice agency, a court --- see C.R.S. 24 - 72 - 302(3) --- for use in the exercise of functions required or authorized by law. They are not, however, records of "official action", as that term is defined by C.R.S. 24 - 72 - 302(7). Thus, it is not the case that they "shall be open for inspection" under C.R.S. 72 - 24 - 303. Rather, they fall within C.R.S. 72 - 24 - 305, which states that the custodian "may" allow inspection, unless, inter alia, such inspection would be contrary to a court order (C.R.S. 24 - 72 - 305(1)(b)), or contrary to the public interest (C.R.S. 24 - 72 - 305(5)). This latter ground expressly addresses denial of access to records of investigations or intelligence information.

Based on these considerations, the Eighth Judicial District will employ the following policy and procedure regarding this issue. This order is entered as a "blanket order" as authorized by Chief Justice Directive 98-05, and is based on the authority contained therein.

- I. In order to avoid compromising officer safety, compromising investigations, or increasing the risk of destruction of evidence or contraband, prior to execution of the search warrant and the filing of the return with the court, search warrants, affidavits in support of search warrants, and related documents shall not be available for public inspection.
2. Once the return has been filed with the court (the filing of such return is the only reliable means the court has of being informed that the warrant has been executed or served) the search warrant and related materials such as the affidavit will on request be made available for public viewing or inspection.
3. Notwithstanding the provisions of paragraph 2 above, the judge or magistrate issuing the warrant may, for good cause, in a particular case, direct that search warrant documents be maintained as confidential even after execution and the filing of the return, if the judicial officer determines that disclosure of same would be contrary to the public interest.

Dated this 29 day of Sept, 2004.



James H. Hiatt
Chief Judge