

Public Labor and Employment

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# AALRR Alert



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## California Appellate Court Allows Police Officer to View Other Officers' Personnel Files

On Monday, the California Court of Appeal ruled in *Riske v. Superior Court*, 2016 WL 7189858 (Dec. 12, 2016), that a plaintiff suing for unlawful retaliation could access personnel records of police officers who received promotions the plaintiff had applied for and lost.

### Case Background

After police officer Robert Riske reported two of his fellow officers with the Los Angeles Police Department (LAPD) for filing false police reports and testified against them, Riske's colleagues called him a snitch and refused to work with him, sometimes even ignoring his requests for assistance in the field. Riske subsequently applied for 14 different detective positions, but was never selected.

Riske sued the City of Los Angeles (City), alleging the LAPD refused to promote him in retaliation for his protected whistleblower activity. The City denied the allegations, asserting that the candidates it selected for the detective positions were more qualified than Riske.

Riske sought the successful candidates' personnel reports which summarized their qualifications and history of commendations and complaints, as well as their last two performance evaluations. To do so, he filed a *Pitchess* discovery motion under California Evidence Code sections 1043 and 1045, which govern the procedures for obtaining confidential personnel records of peace officers. Riske asserted he needed the documents to show that the City's claims that the successful candidates were more qualified than him were merely pretexts for the City's retaliation against him.

After the City opposed the discovery motion, the superior court ruled in its favor, stating that discovery procedures for obtaining peace officer personnel records did not apply to records of officers who had not committed or witnessed any misconduct. Riske filed a writ of mandate with the California Court of Appeal.

### Appellate Court's Ruling

The appellate court held that the City must produce the requested personnel reports for the superior

court judge to inspect in chambers pursuant to Evidence Code section 1045. The court ruled that discovery of peace officer personnel records is not limited to cases involving officers who witnessed or committed misconduct. Instead, if a plaintiff demonstrates that the officers' personnel records are material to the subject matter of the litigation, the records must be produced for review by the trial judge. After inspection, the judge must then order production of those records that are deemed relevant and not otherwise protected from disclosure.

### Appellate Court's Reasoning

The court noted that under California Evidence Code section

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1043(c) and California case law, the party seeking discovery of peace officer personnel records must show that the information in the records is material to the subject matter of the pending litigation. The appellate court stated that this requirement creates a relatively low threshold for discovery.

The court noted that Evidence Code section 1045 contains additional protections and limitations on the scope of discovery. For example, complaints pertaining to officer conduct more than five years before the event or transaction at issue, as well as any information or record that is otherwise “so remote as to make disclosure of little or no practical benefit,” are not discoverable. In addition, individual or personnel records may be protected when the information sought may be obtained from other records maintained by the employer in the regular course of business. The trial judge also may protect officers or agencies from unnecessary annoyance, embarrassment or oppression. The appellate court stated that the process for discovery of peace officer personnel records balances officers’ strong privacy interests in their own personnel records with the needs of civil litigants and criminal defendants to obtain information material to their claims or defense.

The appellate court held that the superior court erred in denying discovery of records of officers who had not participated in or witnessed

the conduct alleged to have caused Riske’s injury. The critical determination is not innocence, but materiality. A plaintiff need only show that the confidential personnel records of officers who were not involved in the injury are nonetheless material to the litigation.

Riske made that showing by articulating his whistleblower activity, a history of being maligned by other officers for that activity, and his substantial qualifications for the 14 positions for which he applied. He also alleged he was more qualified than each of the candidates selected. The appellate court determined that Riske established good cause for the trial judge to review the requested personnel records to determine whether and to what extent any information in the officers’ personnel files was thereafter discoverable.

### **Implications**

The appellate court’s ruling clarifies that peace officers’ personnel records are not immune from discovery, even when the officers neither committed nor witnessed the alleged misconduct that is the subject of the lawsuit. In evaluating *Pitchess* discovery requests, the main focus is on the materiality of the records to the litigation. Cities and counties should be aware that anything — even information in a peace officer’s personnel record that is otherwise confidential — may be revealed in litigation.