

Education Law

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## AALRR Alert



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## Dashboard Video of Arrest Is Not a Police Personnel Record

On July 19, 2016, the California Court of Appeal held that a video recording made by a patrol car's dashboard camera is not a peace officer's or custodial officer's personnel record, and thus is not protected from disclosure by so-called *Pitchess* statutes. (*City of Eureka v. Superior Court of Humboldt County* (July 19, 2016) 2016 WL 3944576.)

### Background

The mobile audio video ("MAV") recording system in a patrol car captured the arrest of a minor in December 2012. The arrest led to a citizen's complaint about the police officers' "handling" of the minor, and the Eureka Police Department conducted an internal affairs investigation. After experts reviewed the evidence against one of the officers, including the video, they determined the officer did not use excessive force during the arrest.

A newspaper reporter wrote articles about the arrest and sought disclosure of the video under the California Public Records Act. The

City denied the request. The reporter then sought the video under Welfare and Institutions Code section 827, which authorizes public disclosure of confidential juvenile records under limited circumstances. The Humboldt County Probation Department objected to disclosure of the video; among other reasons, the Department argued the video was a police officer "personnel record" that could be disclosed only pursuant to a special "*Pitchess* motion." The minor waived his right to confidentiality in the video. The juvenile court ordered the release of portions of the MAV, with the minor's face blurred. The City filed a writ petition to vacate the juvenile court's order.

### *Pitchess* Statutes

The *Pitchess* statutes are found at Penal Code sections 832.7-832.8 and Evidence Code sections 1043-1045. The Legislature enacted the statutes in 1978 to preclude the release of peace officers' personnel records, in response to a 1974 California Supreme Court decision that allowed the release of complaints and investigations found

in an officer's personnel records. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.)

Under the *Pitchess* statutes, personnel records are considered confidential and are protected from disclosure in a criminal or civil proceeding, except through a *Pitchess* motion. The statutes define "personnel records" as files maintained under an employee's name by his or her employing agency, and containing records related to: (1) personal data; (2) medical history; (3) election of employee benefits; (4) employee advancement, appraisal, or discipline; (5) complaints or investigation of complaints; and (6) any other information that would constitute an unwarranted invasion of personal privacy, if such information was disclosed.

--> "The *City of Eureka* decision clarifies one aspect of the personnel record definition: the video recording of an arrest is *not* a personnel record for *Pitchess* statute purposes."

### Court of Appeal Decision

The Court of Appeal in *City of Eureka* affirmed the juvenile court's conclusion that the MAV was not a confidential police personnel record protected by *Pitchess*. The MAV was not the type of record (e.g., confidential citizen complaint, investigation, or investigation outcome in areas such as excessive force, violence, dishonesty, or filing of false police reports contained in the officer's personnel file, or records of appraisal or discipline) that is subject to protection under the statutes.

The court declined to define records of "appraisal or discipline" so broadly as to include every record that might be *considered* for those purposes, noting such a broad reading would place virtually all law enforcement records into the protected category of personnel records. Instead, the court held the MAV was simply a record of the minor's arrest, akin to information in initial incident reports, which typically are not personnel records as defined in the statutes.

Likewise, the court declined to consider the MAV a complaint or investigation within the definition of personnel records. The MAV preceded any complaint or investigation, and the fact that a video may be used in a future internal investigation does not "transmute" the video into a disciplinary document or personnel information.

The court expressed no opinion as to whether the MAV was a public

record subject to the California Public Records Act, as that issue was not raised in the appeal.

### Conclusion

Employers of peace officers or custodial officers, including school districts, colleges and universities with police departments, must be familiar with the requirements of the *Pitchess* statutes and should seek legal counsel before releasing any record that may be considered an officer's personnel record. The *City of Eureka* decision clarifies one aspect of the personnel record definition: the video recording of an arrest is *not* a personnel record for *Pitchess* statute purposes.