

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

CITY OF EUREKA,

Defendant/Appellant,

v.

THE SUPERIOR COURT OF
HUMBOLDT COUNTY,

Respondent,

THADEUS GREENSON,

Real Party In Interest.

Case No: A145701

Super. Court No.: JV140252

Appeal from the Order Requiring Disclosure of *Pitches* Material Issued by
The Superior Court of California, County of Humboldt
Entered on May 20, 2015
By Judge Christopher G. Wilson

REPLY BRIEF

Cyndy Day-Wilson, SBN 135045
City Attorney, City of Eureka
531 K Street
Eureka, California 95501
Telephone: (707) 441-4147
Attorney for Appellant
City of Eureka

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APPELLANT'S REPLY BRIEF

I. INTRODUCTION

Police officers' confidential personnel records are subject to substantial protection. In order to protect police officers' confidential personnel records, the Legislature has carefully crafted several statutes to ensure that the information is not disclosed without a proper showing of good cause. These statutes are commonly referred to as the *Pitchess* statutes. Compliance with the procedures set out by *Pitchess* law is mandatory when a party requests a peace officers confidential personnel records.

Respondent circumvented the Legislature's carefully crafted *Pitchess* protections to access peace officer confidential personnel records contained in a juvenile case file by instead filing a Request for Disclosure of Juvenile Case File (JV-570). Both Welfare and Institutions Code section 827(a)(3)(A) and established case law clearly indicate that *Pitchess* procedures must be complied with in these types of situations. Despite *Pitchess* law protecting the information requested, the Trial Court ordered disclosure of a confidential personnel record without following mandatory *Pitchess* procedure. Respondent argues in his Brief that substantial evidence supports the Trial Court's ruling; however, this contention is irrelevant to the pending appeal, which requests this Court to interpret *Pitchess* law and confirm that where *Pitchess* is implicated *Pitchess* procedures must be complied with.

II. LEGAL ANALYSIS

A. The Appeal At Issue Involves Issues Of Statutory Interpretation, And Thus Respondent's Arguments Regarding "Substantial Evidence" Are Irrelevant

As discussed at length in the City of Eureka's ("City") Opening Brief, the issue on appeal is whether the Trial Court improperly concluded that a Request for Disclosure of Juvenile Case File (JV-570) can be used to circumvent *Pitchess* procedures. The evidence sought by Respondent is a confidential peace officer personnel record. Therefore, pursuant to Penal Code section 832.7, the video cannot be disclosed without strict compliance with Evidence Code sections 1043 and 1046 (the *Pitchess* statutes), as well as compliance with *Pitchess* case law.

Here, the Trial Court ordered disclosure without first requiring compliance with *Pitchess* procedures. However, *Pitchess* law was applicable, and that the Trial Court erred in not holding a *Pitchess* hearing that would require Respondent to show good cause and other elements as a condition precedent to the Court even reviewing the evidence in chambers. As such, the question on appeal is a matter of statutory interpretation and Respondent's lengthy argument regarding "substantial evidence" is entirely irrelevant to the matter at hand. The fact that the City did not provide this Court with the evidence is also irrelevant as the City's argument is that since *Pitchess* law applies and *Pitchess* procedures were not complied with, the evidence should never have even been reviewed in chambers by the Trial Court.

Prior to even reviewing the evidence, the Trial Court was required to make a finding of both good cause and relevancy. As the Court determined that *Pitchess* did not apply, it made no such finding and proceeded to review

the evidence pursuant to Welfare and Institutions Code section 827. As such, any argument as to “substantial evidence” is irrelevant as the true issue is whether *Pitchess* law applies.

B. *Pitchess* Material Does Not Lose Its Protected Classification Simply Because It May Not Be Contained In The Peace Officer’s Physical Personnel File

Respondent argues that *Pitchess* only covers confidential personnel records contained in an officer’s personnel file. This assertion is not only legally unsupported, but also runs counter to established case law. While Penal Code section 832.8 states that “‘personnel records’ means any file maintain under that individual’s name by his or her employing agency” it has been interpreted to cover situations where confidential information is contained elsewhere. For example, the Supreme Court in *Copley Press, Inc v. Superior Court* (2006) 39 Cal.4th 1272, 1286 indicated that information can still be a confidential personnel record even when the information is not contained in the employing agency’s files. The intent is to protect peace officer’s privacy from invasion into their confidential personnel records regardless of where the records are stored.

In *Copley*, a reporter made a request for all documents, including a recording, filed, submitted, or created by a commission in regards to a peace officer’s administrative appeal of a disciplinary matter. (*Copley Press, Inc v. Superior Court* (2006) 39 Cal.4th 1272, 1279.) This information was in the possession of the commission, but not contained in the employing agency’s personnel file. (*Id.* at 1281.) The Court of Appeal in that case concluded that the commission’s records were not subject to *Pitchess* protections because *Pitchess* “does not apply to information about a peace officer the source of which is other than the employing agency’s file.” (*Id.*

at 1280.) The Supreme Court disagreed with the Court of Appeal's contentions and reversed in whole. (*Id.* at 1286.)

In addition, the Court in *Pasadena Police Officers Association v. Superior Court* (2015) 240 Cal.App.4th 268, 288, held that some information contained in a third-party produced report was protected from disclosure by the *Pitchess* statutes even though the report was not included in the employing agency's personnel file for the individual officers or even directed at individual officers. The Court further summarized the state of the law on this issue when it noted, "it is now established that 'disciplinary records of peace officers are protected by privilege under the *Pitchess* statutes no matter where those records are generated.'" (*Id.* at 288.) As such, Respondent's contention—that the evidence sought is not a confidential personnel record protected by *Pitchess* merely because the City did not show that it was contained in the police department's personnel file for the individual officer—is incorrect.

C. *Pitchess* Procedure Cannot Be Circumvented By Use Of Welfare And Institutions Code Section 827

Respondent's Brief fails to address the City's main contention that when *Pitchess* procedures are required, a party making a request for peace officers' confidential personnel records must comply with the *Pitchess* statutes and cannot circumvent these protections by filing a request under Welfare and Institutions Code section 827. As discussed above, which Respondent has failed to address, the *Pitchess* statutes cover the pending request. As such, Penal Code section 832.7 mandates the procedures that must be followed prior to the Trial Court even reviewing the requested evidence in chambers. These protections and procedures are mandatory and Welfare and Institutions Code section 827 cannot be used to circumvent these

protections. Welfare and Institutions Code section 827(a)(3)(A) expressly addresses this fact and states that “[i]f a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law . . . the requirements of that state law . . . prohibiting or limiting release of the juvenile case file or regulation prohibiting or limiting release of the juvenile case file or any portion thereof shall prevail.”. Case law supporting the City’s contention has been thoroughly briefed in the City’s Opening Brief.

Thus, based on cited case law and Welfare and Institutions Code section 827(a)(3)(A), it is clear that when information that constitutes confidential personnel records under *Pitchess* is located in a file that is subject to discovery under another statute, the information remains protected under *Pitchess* and may not be disclosed without following *Pitchess* procedures as well. This is the case even where the “public’s interest in disclosure . . . ‘is particularly great’ because it relates to ‘officer involved shootings’ and governmental policies regarding law enforcement and public safety.” (*Pasadena Police Officers Association v. Superior Court* (2015) 240 Cal.App.4th 268, 290.) This is because “in enacting the *Pitchess* statutes, the Legislature made a policy determination that the desirability for confidentiality in police personnel matters outweighs the public’s interest in openness.” (*Id.*) The Legislature has clearly indicated that the privacy interest of these officers are paramount and must be protected—a protection that may only be surmounted by properly following the *Pitchess* procedures.

III. CONCLUSION

The evidence Respondent seeks, which is contained in the juvenile court file of Horacio M., is a peace officer confidential personnel record governed by *Pitchess* law. As such, *Pitchess* procedures must be followed

even when the requested information is contained in a source other than the officer's employer's personnel files. Welfare and Institutions Code section 827 allows for access into a juveniles court file, but clearly indicates that to the extent that the evidence contained therein is protected by other laws such as *Pitchess*, the *Pitchess* statutes must be followed.

Respondent's arguments regarding substantial evidence and his other arguments are irrelevant to this fact and the pending issue of *Pitchess* law statutory interpretation. As such, the Trial Court's order requiring the City to disclose the evidence sought should be overturned and remanded pending Respondent's compliance with the *Pitchess* procedures.

Dated: January 7, 2016

CITY OF EUREKA

By: Cyndy Day-Wilson
CYNDY DAY-WILSON
Attorney for Appellant
City of Eureka

CERTIFICATE OF WORD COUNT

The foregoing Reply Brief contains 1,445 words (inclusive of footnotes, but exclusive of tables and this Certificate). In preparing this certificate, I relied on the word count generated by the computer program used to prepare this document.

Executed on January 7, 2016 at Eureka, California.


CYNDY DAY-WILSON
Attorney for Appellant
City of Eureka