

**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: A145071

Super. Court No.: JV140252

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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

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**APPELLANT'S BRIEF**

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, <b>First</b> APPELLATE DISTRICT, DIVISION <b>Five</b>	Court of Appeal Case Number: <p style="text-align: center; margin: 0;">A145071</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). Cyndy Day-Wilson, SBN 135045 City Attorney, Eureka 531 K Street Eureka, CA 95551 TELEPHONE NO.: 707-441-4147 FAX NO. (Optional): 707-441-4148 E-MAIL ADDRESS (Optional): cday-wilson@ci.eureka.ca.gov ATTORNEY FOR (Name): City of Eureka	Superior Court Case Number: <p style="text-align: center; margin: 0;">JV140252</p>
	FOR COURT USE ONLY
APPELLANT/PETITIONER: City of Eureka  RESPONDENT/REAL PARTY IN INTEREST: Superior Court of Humboldt County	
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>	

1. This form is being submitted on behalf of the following party (name): City of Eureka

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Adam Laird	Former EPD Officer - subject of the media's request
(2) County of Humboldt	Probation Department
(3) District Attorney, Humboldt County	prosecutor
(4)	
(5)	

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: October 26, 2015

Cyndy Day-Wilson, Esq.  
 (TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY)

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## APPELLANT'S 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.

Mr. Greenson has attempted to circumvent the Legislature's carefully crafted *Pitchess* protections to access 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, Mr. Greenson did not make the required showing of good cause necessary under Evidence Code section 1043(b)(3). As such, the lower court erred when it granted Mr. Greenson's disclosure request without first following *Pitchess* procedure. By failing to conduct the required *Pitchess* hearing, the privacy interests of the individual officer has been compromised, and clearly established law has been undermined.

## II. STATEMENT OF THE CASE

### A. The Underlying Alleged Officer Misconduct

On December 6, 2012, Eureka City Police Sergeant Adam Laird, along with several other officers, arrested Horacio M., a minor. (CT2, 272, ¶ 6.)<sup>1</sup> A Welfare and Institutions Code section 602 delinquency petition was filed against the minor. This incident resulted in a citizen complaint and misdemeanor charges against Sergeant Laird. In addition to the citizen complaint and criminal charges, an Internal Affairs investigation into the actions of Sergeant Laird was initiated. During that investigation, the Eureka Police Department pulled a recording of the incident, which was captured on a camera installed on the dashboard of a patrol car. This video served as the backbone of the Internal Affairs investigation and was intimately relied upon by the investigating officers. Ultimately, the District Attorney dismissed the criminal charges against Sergeant Laird and the delinquency petition against the minor was withdrawn.

### B. Subsequent Disclosure Requests and Proceedings

On or about August 19, 2014, Mr. Greenson made a Public Records Act request for “any and all records . . . associated with the investigation, arrest and prosecution of former Eureka Police Department Sergeant Adam Laird . . . [including] copies of all video and audio files associated with the investigation, including . . . the dash cam video.” On September 12, 2014, the City informed Mr. Greenson that disclosure was prohibited pursuant to Government Code section 6254, Penal Code sections 832.5 and 832.7, and

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<sup>1</sup> Citations to the Clerk’s Transcript, Volume 1 and Volume 2 are noted as “CT1” and “CT2” followed by the page number and line numbers or paragraph numbers. Citations to the Reporters’ Transcript are noted as “RT” followed by the page number and line numbers.



Welfare and Institutions Code section 827. Following the City's response, Mr. Greenson filed a Request for Disclosure of Juvenile Case File pursuant to Welfare and Institutions Code section 827. This filing requested "[a]ny and all police video recordings" related to the arrest. In his filing, Mr. Greenson made no indication that his request was related to the interests of the juvenile, but rather that "the public has a right to know exactly what happened . . . in order to evaluate the performance of both its police officers and prosecutors."

In its opposition, the City argued that a *Pitchess* Motion was the appropriate avenue to obtain disclosure of the video, as it constituted confidential personnel records as defined by Penal Code section 832.8. In addition, the City indicated that Welfare and Institutions Code section 832(a)(3)(A) also notes that should a document contained in a juvenile file be privileged or confidential pursuant to another state statute, the other statute (in this case the *Pitchess* statutes) shall prevail. Despite the *Pitchess* requirements not being met, the Superior Court granted Mr. Greenson's request and ordered that a portion of the video be released.

### III. STANDARD OF REVIEW

This appeal involves the interpretation and applicability of statutes. As such, the standard of review is *de novo*. (See *County of Colusa v. Douglas* (2014) 227 Cal.App.4th 1123, 1129; *McIntyre v. Sonoma Valley Unified School District* (2012) 206 Cal.App.4th 170, 179.)

#### IV. LEGAL ANALYSIS

##### A. Welfare And Institution Code Section 827 Cannot Be Used To Circumvent Pitchess Procedure

Police officers' personnel records are privileged and confidential pursuant to Penal Code section 832.7(a) and are protected by the constitutional right to privacy. (Cal. Const., art. 1, §§ 1, 3(a)(3); *City and County of San Francisco v. Superior Court* (1982) 125 Cal.App.3d 879, 882.) Disclosure of such confidential records is prohibited without strict compliance with *Pitchess* statutes and a careful analysis of the fundamental right of the officers. (Evid. Code, § 1043(c); Pen. Code, §§ 832.5, 832.7(a); *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1144.) "In the context of discovery of confidential information in personnel files, even when such information is directly relevant to litigation, discovery will not be permitted until a balancing of the compelling need for discovery against the fundamental right of privacy determines that disclosure is appropriate [and], even when the balance tips in favor of disclosure, constitutional concerns require a strict circumspection of the scope of the disclosure." (*El Dorado Savings & Loan Assn. v. Superior Court* (1987) 190 Cal.App.3d 342, 345 (internal citations omitted).)

Accordingly, *Pitchess* law, California statutes, and the California Constitution place stringent limitations on the discoverability of police officers' confidential personnel records that cannot be overcome absent strict compliance with *Pitchess* laws and jurisprudence. Peace officers put their lives at risk every day to protect the public. *Pitchess* law and jurisprudence has been crafted to protect officers' rights from constant invasion by every criminal defendant they arrest. (See *Brown v. Valverde* (2010) 183 Cal.App.4th 1531, 1554–55.) One of the Legislatures main purposes in

establishing these procedures was to protect officers' privacy interest to the fullest extent possible. (*People v. Johnson* (July 6, 2015, S221296) \_\_Cal.4th\_\_.)

Where a party seeks to circumvent *Pitchess* procedures by obtaining confidential personnel records using a different statute such as the Public Records Act or the Welfare and Institutions Code section at issue here, the *Pitchess* statutes and the other statute must both be complied with in order to obtain the relevant information. (See, e.g., Welf. & Inst. Code, § 832(a)(3)(A).) This is because these statutes protect unique interests; each of which must be closely guarded. For example, the procedure outlined in Welfare and Institutions Code section 827 is designed to promote effective communication between courts, law enforcement agencies, and schools to ensure the rehabilitation of juveniles. (Welf. & Inst. Code, § 827(b)(1).) Welfare and Institutions Code section 827, however, is not concerned with the statutorily and constitutionally protected privacy rights of the officer, which the *Pitchess* statutes were designed to protect. (*People v. Johnson* (July 6, 2015, S221296) \_\_Cal.4th\_\_.)

Welfare and Institutions Code section 827 clearly envisions instances where information contained in a juvenile's court file is also protected under different provisions of law. This statute addresses these crossover instances by mandating that the requirements contained in the other statute be complied with as well. In particular, Welfare and Institutions Code section 827(a)(3)(A) states, "[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." As such, it is clear that where information

contained in a juvenile record is protected pursuant to the *Pitchess* statutes, a party seeking to access that information must first meet the requirements of Welfare and Institutions Code section 827. Once that first hurdle has been surmounted, Welfare and Institutions Code section 827(a)(3)(A) mandates that the party then show good cause pursuant to *Pitchess*. Only when both statutes have been complied with can disclosure of the confidential personnel records of the officer be disclosed.

While there does not appear to be any case law on the interplay of the *Pitchess* statutes with Welfare and Institutions Code section 827, there is substantial case law on the interplay of the Public Records Act with the *Pitchess* statutes. Much like Welfare and Institutions Code section 827(a)(3)(A), the Public Records Act contains an exemption requiring compliance with other statutes that protect certain confidential information. (Gov. Code, § 6254(k).) In particular, the relevant exemption of the Public Records Act protects from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.” (Gov. Code, § 6254(k).) Considering that the exemption contained in the Public Records Act is so similar to the exemption codified in Welfare and Institutions Code section 827(a)(3)(A), a review of case law considering the interplay of *Pitchess* and the Public Records Act is both appropriate and informative.

The most recent case to address the interplay of the Public Records Act and the *Pitchess* statutes was *Pasadena Police Officers Association v. Superior Court* (September 10, 2015, B260332) \_\_ Cal.Rptr.3d \_\_. That case involved an officer involved shooting. (*Id.*) Following the shooting, the police department’s Criminal Investigations Division conducted an

investigation to determine whether the officers had committed a crime. (*Id.*) The officers gave interviews and statements during that investigation. (*Id.*) In addition to the criminal investigation, the police department retained OIR as a private consultant to conduct a review of the shooting with the ultimate goal of evaluating the department's procedures in general. (*Id.*) The report that was to be generated would not affect the involved officers' advancement or be considered in any disciplinary matter involving the officers. (*Id.*) OIR used information obtained from the criminal investigation in portions of OIR's 70-page report. (*Id.*) Once the report was complete, several newspapers filed Public Records Act requests to obtain the report, which the City and the officers opposed. (*Id.*)

The Trial Court found, and the Court of Appeal agreed, that the report as a whole was a public record entitled to disclosure under the Public Records Act. (*Pasadena Police Officers Association v. Superior Court* (September 10, 2015, B260332) \_\_Cal.Rptr.3d\_\_.) However, the Trial Court also found, and the Court of Appeal agreed, that portions of this public record also contained confidential personnel records protected by *Pitchess*. (*Id.*) To the extent that the public record was to be disclosed, the information that qualified as confidential personnel records under *Pitchess* must be redacted to protect the privacy of the officers absent a proper *Pitchess* motion being made. (*Id.*)

Thus, it is clear that where information that constitutes confidential personnel records under *Pitchess* is found in a document or file that is discoverable under another statute, the information protected by *Pitchess* is still protected and may not be disclosed without following *Pitchess* procedure. 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.” (*Id.*) 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 video that Mr. Greenson is requesting is a confidential personnel record pursuant to *Pitchess* law. His concern in filing his petition was clearly not for the juvenile whose records he was trying to access. Instead, he seeks access and disclosure of this information because he believes it is critical so that the public may “evaluate the performance of both its police officers and prosecutors.” This contention is irrelevant and *Pitchess* must still be followed. As the Court in *Pasadena Police Officers Association* clearly indicated, the Legislature made a conscious conclusion that “the desirability for confidentiality in police personnel matters outweighs the public’s interest in openness” even where the public’s interest is “‘particularly great’ because it relates to [excessive force, such as officer involved shootings] and governmental policies regarding law enforcement and public safety.” (*Pasadena Police Officers Association v. Superior Court* (September 10, 2015, B260332) \_\_Cal.Rptr.3d\_\_.)

The privacy interests protected by Welfare and Institutions Code section 827 is not concerned with the privacy interest protected by the *Pitchess* statutes, which is the privacy right of peace officers. (Welf. & Inst. Code, § 827(b)(1); *People v. Johnson* (July 6, 2015, S221296) \_\_Cal.4th\_\_.) As such, when documents contained in a juvenile file contain police officer confidential personnel records, a requesting party cannot circumvent *Pitchess* procedure by simply making a petition under Welfare and Institutions Code section 827. 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* procedure.

**B. The Requested Material Is Confidential Personnel Records Of  
A Police Officer And Protected By *Pitchess***

As it has been established that *Pitchess* procedures apply to police officer confidential personnel records contained in juvenile court files, the requested recordings may not be disclosed as they qualify as confidential personnel records.

Penal Code section 832.7(a), states “[p]eace officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Section 1043 and 1046 of the Evidence Code.” [underscore added.] Penal Code section 832.8 goes on to define personnel records to include “complaints, or investigations of complaints, concerning an event or transaction in which [a named officer] participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties,” as well as records related to “[e]mployee advancement, appraisal, or discipline.”

The Legislature has left the definition of personnel records broad, and the video recording at issue would fall into this broad definition. In *Berkley Police Association v. City of Berkley* (2008) 167 Cal.App.4th 385, this Court held that personnel records include any report or other record naming an individual officer and relating to a complaint or investigation of a complaint about an event the named officer participated in or perceived and that concerned the manner of the officer’s performance of duty, regardless of the name or caption under which the report or record is kept. The Court

emphasized that the key to a finding of confidentiality under Penal Code section 832.8(e) was that the record concern an officer who was the subject of a citizen complaint. (*Id.* at 401.)

The event depicted in the video recording requested by Mr. Greenson generated a citizen complaint. This complaint and the officers conduct also resulted in an Internal Affairs investigation being opened. The video was pulled in direct response to this investigation and the citizen complaint. Internal Affairs and the District Attorney relied upon it heavily in determining whether the officer had violated police department policy and possibly committed a crime. Therefore, the recording would fall into the definition of confidential personnel records defined by Penal Code 832.7 as explained in *Berkley Police Association*.

## V. CONCLUSION

It has been clearly established that the recording that Mr. Greenson seeks, and that is contained in the juvenile court file of Horacio M., is a confidential personnel record governed by *Pitchess* law. As such, the Legislature has manifested its intention that a petitioner follow the *Pitchess* procedures even when the requested information is contained in a source other than the physical files of an officer. Welfare and Institutions Code section 827 allows for access into a juveniles court file, but clearly indicates that to the extent that the information or records contained therein is protected by *Pitchess*, then the *Pitchess* statutes must be followed.

These two statutes must be used in tandem to get the information that Mr. Greenson is requesting. First, Mr. Greenson must meet the procedure outlined in Welfare and Institutions Code section 827 to gain access to the juvenile case file. Then, he must satisfy the *Pitchess* good cause requirement



to access any police officer confidential personnel records that may be contained inside the juvenile file. As Mr. Greenson has not established good cause under *Pitchess*, he is prevented from accessing the requested recording that is contained in the juvenile case file. Therefore, the lower court erred when it ordered disclosure of the video recording at issue.

Dated: October 23, 2015

CITY OF EUREKA

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

**CERTIFICATE OF WORD COUNT**

The foregoing Appellant's Brief contains 2,754 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 October 23, 2015, at Eureka, California.

/s/ Cyndy Day-Wilson  
CYNDY DAY-WILSON  
Attorney for Appellant  
City of Eureka

**PROOF OF SERVICE**

At the time of this service I was over 18 years of age and I was not a party to this action. My business address is **531 K Street, Eureka, California 95501**. On the date indicated below, I served the following documents: **APPELLANT'S BRIEF** ("Documents").

The Documents were served on the following persons ("Persons"):

**Thadeus Greenson**  
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The Documents were delivered by:

**United States Mail.** I served the Documents by enclosing a true copy in a sealed envelope to the addresses identified above and depositing the envelope in the United States mail with the postage fully prepaid in the county where I reside or am employed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**Dated: October 23, 2015**



**Danielle L. Vickman**