

CHAPTER 1
DISCOVERY OF PEACE OFFICER
PERSONNEL RECORDS (PITCHESS MOTIONS)
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CHAPTER 1
DISCOVERY OF PEACE OFFICER
PERSONNEL RECORDS (PITCHESS MOTIONS)

1. INTRODUCTION. A Pitchess Motion is a legal process which enables parties outside the Department the ability to obtain peace officer personnel records or information contained therein. Such information may include complaints or investigations concerning the officer's alleged use of or failure to intervene in the use of excessive force or propensity for racial/ethnic prejudice, fabrication of charges, illegal search and seizure, false arrest/imprisonment, unlawful seizure, etc. Any information released by the court is subject to a signed protective order.

2. **CONFIDENTIALITY OF RECORDS.**

a. California Penal Code, Section 832.5 requires, that any agency employing peace officers establish procedures for investigating Civilians' Complaints and make those procedures available to the public. This section also requires investigative reports be retained for five years for complaints with no sustained finding, and 15 years for sustained finding of misconduct including any reports and/or findings related to these complaints.

b. California Penal Code, Section 832.8 defines personnel records.

3. **DISCOVERABLE RECORDS.**

a. Statutory law holds that certain personnel records of officers involved in an arrest or traffic stop may be discoverable through a Pitchess Motion.

b. The majority of motions served on the Department seek records of Civilians' Complaints alleging the use of excessive force or racial/ethnic prejudice and disciplinary action as a result of those complaints. These types of complaints are normally considered by the court to be relevant and discoverable through the motion process. Due to case law, the courts have expanded discovery to include any type of Civilians' Complaints, Adverse Actions, Memorandums of Direction, or any completed internal investigation documents, as long as the attorney's declaration in support of the motion effectively shows the relevancy of the complaint to the case. Recent amendments of California Code of Civil Procedure, Section 1005(b) and California Evidence Code, Section 1047, have also expanded discovery to include the records of supervisory officers involved in the incident that gave rise to the Pitchess Motion.

4. NONDISCOVERABLE RECORDS.

a. California Evidence Code, Section 1045 requires that, when a motion is filed, and the police agency produces the records to the court, the judge will make an initial relevance decision to determine if the requirements of the motion are satisfied. If the judge determines the requirements have been satisfied, the judge will then review the records in camera and exclude from disclosure the following:

- (1) Conclusions of the officer who investigated the complaint.
- (2) Officers personal contact information such as a home address and phone number.

5. SERVICE. California Evidence Code, Section 1043 requires that the party seeking discovery must file a written motion with the proper court. Based on a change in the law, most Pitchess Motions must be served at least 10 court days prior to the hearing. Service of the motion may be accepted at any Area office, Division office, or at the Office of Legal Affairs (OLA). Service of the motion may be done by personal service, regular mail, overnight mail, or fax (only if authorized by the Area) at any Area or Division office. Motions requesting former/retired officers records may also be served at any Area/Division office.

NOTE: When a motion is received at the Area or Division office, OLA shall be notified the same day, via email, at OfficeOfLegalAffairs@chp.ca.gov with the motion, arrest report, how and when the motion was served, and the Custodian of Records information.

a. Compliance. When the motion is received, OLA will contact the Attorney General's office and request legal representation at the hearing. If the motion is proper, OLA will follow these procedures:

- (1) Request employee history printouts of the named employees.
- (2) Notify the employees whose records are sought the filing of the motion, by e-mail for active uniformed personnel, or by regular mail for former/retired uniformed personnel.
- (3) Forward the motion, arrest report, custodian of records contact information, and employee history to the assigned Deputy Attorney General (DAG).

NOTE: The custodian of records should be at least one rank higher than the highest-ranking named uniform, unless waived by the named uniform. If a lieutenant commander, captain, or above, is named, the custodian of records

must be a command decision.

(4) If multiple officer records are sought, OLA will coordinate the transfer of files from Area offices to the custodian of records.

b. Custodian of Records Responsibilities.

(1) Read the motion, memorandum, and declaration, to determine the type of records that are the subject of the motion. The custodian of records may want to confer with the assigned DAG to be certain they have identified the records that are the subject of the motion.

(2) Search for all records that are subject of the motion which may include prior locations where the person who is the subject of the motion may have worked. Keep a record of all locations searched, including the identity of the persons with whom the inquiry was made.

(3) Gather the originals, if possible, of all potentially responsive documents. Print out copies of any computerized records. Consult with the DAG if there are questions about what documents are needed for the court hearing. The judge will want to review the documents if good cause is found by the judge.

c. Criminal Court Proceedings. A Pitchess Motion hearing normally proceeds as follows:

(1) The hearing begins in open court, with the defense attorney and/or district attorney, assigned DAG, and the custodian of the records, present.

(2) The defense attorney or district attorney makes arguments for granting the motion and a DAG may appear in opposition to the motion when needed.

(3) The judge determines if the requirements of the motion are met.

(4) If the requirements are not met, the judge will deny the motion.

(5) If the requirements are met, the judge will conduct an in-camera review of the documents in chambers. The persons allowed in chambers are the judge, the court reporter, the custodian of records, the DAG, and any other persons the custodian of records agrees to have present. Neither the district attorney nor the defense attorney is allowed in chambers during the in-camera review. During the in-camera review, the judge will review all responsive records to determine if there are any relevant documents regarding the motion. The judge will announce their finding in chambers.

(6) The judge should then return to open court and announce the findings for the record.

(a) If the judge finds there is relevant information, they will normally order the disclosure of relevant information to the defense attorney and/or district attorney.

(b) Before the release of any ordered disclosure, due to the sensitive nature of the documents, the judge will need to sign a protective order prepared by the assigned DAG.

(c) Once the protective order has been signed by the judge, the custodian shall deliver the records or information to the district attorney and defense attorney by a certain date (compliance date), through the assigned DAG.