



Dear Legally Liz,

I heard that the Court of Appeal issued a new decision clarifying the *Pitchess* process and the discovery of peace officer personnel records. Can you describe the decision and whatever importance it might have?

Sincerely,
Sergeant Percy Nell

Dear Sgt. Nell,

The Second District Court of Appeal did recently clarify the *Pitchess* process in its decision in *Riske v. Superior Court*. For background, the *Pitchess* process, which is set forth in California Evidence Code Sections 1043 and 1045, dictates how, when and under what circumstances peace officer personnel records may be discovered. Generally, information contained in a police officer's personnel file is protected from discovery by Penal Code Section 832.7. To secure disclosure of such protected information, a party must make a noticed motion demonstrating good cause for production of the records; and if good cause has been shown, a trial court or administrative hearing officer must then conduct an in-camera hearing, whereby the judge inspects the records and then disclosure of only those records that are relevant. When the motion seeking the records is filed, your employer is required to notify any individual whose records are being sought. During the in-camera inspection, the judge is required to exclude any information contained in the personnel files of little or no practical benefit, complaints over five years before the incidents and conclusions of investigating officers in the context of any criminal proceedings. Finally, should any personnel records be ordered disclosed after the in-camera hearing, the court is required to enter a protective order, ordering "that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law."

In *Riske*, an officer alleged that he was denied promotion because he was being retaliated against for being a whistleblower. To support his allegations, Riske sought the production of certain portions of the personnel records (the TEAMS reports and last two performance evaluations) of the officers who were promoted ahead of him. The City opposed the motion, arguing that the other officers' personnel records were not subject to discovery because the officers were innocent third parties who had not witnessed or caused Riske's injury. The trial court initially agreed and declined to conduct the in-camera hearing. The Court of Appeal then

reversed, holding that “the discovery of peace officer personnel records is not limited to cases involving officers who either witnessed or committed misconduct.” The City, therefore, had to produce the requested records for an in-camera inspection.

What this means is if you believe you were bypassed for promotion because of improper reasons, you may be able to obtain certain portions of the personnel records of those who were promoted ahead of you to refute the argument that the other officers were more qualified. However, the production of the records would still be contingent on the trial court determining after an in-camera review that such records are relevant to your claims.

For all other officers, this decision means that your personnel records may be subject to discovery even if you did not witness any misconduct or even if you did not engage in any misconduct yourself. However, your personnel records would still be entitled to substantial protections. The City would still need to notify you of the pending motion. The party seeking the records would still need to demonstrate good cause, and the trial court would still need to determine that the records were relevant and were not subject to an exclusion before ordering their production. Finally, any portions of your records that are produced would still be subject to a strict protective order limiting their use and distribution.

Legally,
Liz

Names have been changed to protect privacy. Send your anonymous questions to LegallyLiz@lappl.org.