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TRAINING BULLETIN

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POLICE VIDEO NOT PROTECTED UNDER PITCHESS

City of Eureka v. Superior Court (Greenson), filed July 19, 2016.

Court of Appeal, First Appellate District, No. A145701

The issue in the case was whether a video of an arrest captured by a patrol car's dashboard camera is a confidential "personnel record" under Penal Code §832.7 or §832.8. The Court held that such a video is **not** a personnel record protected by the Pitchess statutes. (See *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

In December 2012, Eureka police officers arrested a minor. The minor's arrest involved a chase, during which he fell or was taken to the ground. Some of the activity related to the arrest was captured on a police car's dashboard video camera. The minor was charged in Juvenile Court, but that charge was later dismissed. A complaint was lodged regarding the officers' handling of the arrest. Following an internal investigation, the district attorney charged one of the officers with assault on the minor and making a false report. Prosecution and defense experts reviewed the video and concluded the officer had acted reasonably. The case against the officer was dismissed.

Greenson, a local reporter who had written articles about the incident and its aftermath, filed a request with the City to obtain a copy of the arrest video under the Public Records Act *(Government Code* § 6250). The City declined the request, citing discretionary exemptions for personnel records and investigative files under the Act. Greenson then filed a request in Juvenile Court for a copy of the arrest pursuant to Welfare and Institutions Code §827, which authorizes public disclosure of confidential juvenile records under limited circumstances. The City objected and urged the court to deny the request, arguing that the video was a police officer "personnel record" and "[d]isclosure ...would require a successful Pitchess [m]otion," which Greenson had not filed. The court determined the video was not a confidential police personnel record protected by the Pitchess statutes, and ordered the City of Eureka to release a portion of the video to Greenson.

The Court of Appeal agreed. The Court held that an arrest video is not a "personnel record" under §832.8, which defines such records as those relating to a police officer's "advancement, appraisal, or discipline." The Court based its decision on the California Supreme Court case, *Long Beach Police Officers Assn. v. City of Long*

Beach (2014) 59 Cal. 4th 59 (LBPOA), where that court concluded the identity of a police officer involved in a shooting was not information covered by the Pitchess statutes. In LBPOA, the court stated, "[i]t may be true that such shootings are routinely investigated by the employing agency, resulting eventually in some sort of officer appraisal or discipline. But only the records generated in connection with that appraisal or discipline would come within the statutory definition of personnel records."

In this case, the Court of Appeal noted that just because the arrest video may have become part of an internal investigation or was used as part of that investigation did not convert it into a confidential "police personnel record."

It must be pointed out that the Court of Appeal expressed "no opinion on whether the arrest video is a public record under the California Public Records Act" because the City did not raise that argument on appeal. For many peace officer-related public record requests, the CPRA's exemptions for "investigatory files" or "records of . . investigations" are employed to protect confidential law enforcement related information. These exemptions may be particularly relevant to CPRA requests for data obtained from a police vehicle's video system or an officer's body-worn camera.

In *Haynie v. Superior Court of Los Angeles County* (2001) 26 Cal.4th 1061, the Supreme Court considered a CPRA request, which sought all audio recordings of conversations with officers during a detention, filed by a man detained by police officers. The Court refused the request, and stated: ". . . we do not mean to shield everything law enforcement officers do from disclosure. Often, officers make inquiries of citizens for purposes related to crime prevention and public safety that are unrelated to either civil or criminal investigations. The records of investigation exempted under §6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency. Here, the investigation that included the decision to stop Haynie and the stop itself was for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission. Records relating to that investigation are exempt from disclosure . . . ."

The *Haynie* case, and others that cite it, appears to favor allowing public agencies to claim police video is exempt from the disclosure requirements of the CPRA. On the other hand, numerous recent rulings from other states with similar "right to know" or "freedom of information" acts, have held such videos must be released. With the proliferation of body worn cameras, we can expect to have a case that will decide this issue in California in the very near future.

Stay safe!

Robert Rabe is an associate attorney in the firm. He has been a member of the California Bar for almost 40 years, specializing in criminal law, appellate practice and police administrative matters.