

# PITCHES MOTIONS



Office of General Counsel

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## **THE PITCHESS MOTION HEARING PRACTICE**

### **I. Definition and Overview**

A Pitchess motion is a request made by a defendant in a criminal action for access to information in the personnel file of an arresting police officer. Pitchess motions can also be made in civil actions, but they are rare. The applicable procedure in a civil case is the same as what is described here. The name “Pitchess” comes from a 1974 California Supreme Court case, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. The Pitchess process is now codified in California Evidence Code sections 1043-47.

The theory underlying a Pitchess motion is that a defendant should be entitled to any information that is relevant to his/her defense. If the arresting officer’s personnel file contains information that might bear on the defendant’s claim that the officer had engaged in misconduct, as a matter of fairness, the defendant should have access to that information.

Both the legislature and the courts, however, have recognized that the police officer whose records are sought has an equally compelling interest in maintaining the privacy of his/her personnel file. The Pitchess hearing process described below is designed to ensure an appropriate balance of those two competing interests.

### **II. The Records Subject to a Pitchess Motion**

The term “personnel file” for purposes of a Pitchess motion includes all records maintained by the employer on the arresting officer, including records of internal affairs investigations, citizen complaints, records in the Human Resources department, and records containing psychological or other medical information concerning the arresting officer.

This is the broad field of potential records that may be implicated. Necessarily, in each individual case, this broad scope is narrowed in accord with the particular charges made. Records in a personnel file evidencing use of excessive force, for example, would not be relevant to a criminal case where the police misconduct alleged was submission of a false report. The scope of appropriate and potentially relevant records in each individual case should be discussed in advance, if it is not obvious, so that the right records are taken to court with the police officer.

### **III. The Pitchess Motion**

The defendant must serve a Pitchess motion on the custodian of the records sought. Typically the custodian is the University Police Chief or his/her designee. Motion papers must include a notice of hearing that specifies which records are sought, a memorandum of legal arguments in support of disclosure in that particular case, a declaration under oath, usually by the defendant’s attorney, which specifies the defenses raised and the factual justification for disclosure, and a proposed order for the judge to sign. If excessive force is charged in connection with the arrest that gives rise to the Pitchess motion, a copy of the police report must be attached.

If hand delivered, the motion must be served at least 16 court days before the hearing date. Service by mail requires five additional calendar days. Service by facsimile or overnight mail requires two additional calendar days. However, a motion may only be served by facsimile with the University's pre-approval. A copy of the Pitchess motion should be provided promptly to the campus' University Counsel. If a written opposition is made it must be filed with the court and served on the opposing attorney nine court days prior to the hearing. Counsel for the Pitchess applicant may then elect to file a reply brief with the court and serve a copy on the University five court days before the hearing. Service of an opposition memorandum must be accomplished in a manner that ensures the other side will receive it within 24 hours of filing, (e.g. via personal service, overnight mail, or facsimile by agreement.) Opposing counsel must follow this same rule when serving any reply brief. (Code Civ. Proc. § 1005.)

Upon receiving a Pitchess motion, the agency is required to immediately notify the officer affected, who is entitled to separate representation, at his/her own expense, at the hearing if s/he so chooses. A sample letter advising an officer of a Pitchess motion requesting information from his/her file is attached.

#### **IV. Opposing a Pitchess Motion**

The hearing process is in two steps. First, the criminal defendant making the request for police officer records has the burden to demonstrate "good cause." The court needs to evaluate whether the defendant has set forth specific facts that support the particular records requested. The legal standard for the good cause determination is relatively low. The criminal defendant making the request need only show that the scenario of alleged officer misconduct could or might have occurred. If this is lacking, the university will challenge the lack of good cause, and the judge will rule on the university's objection. The purpose for this first step in the process is to determine the type of records that are subject to disclosure.

The second step requires the judge to conduct a separate review of actual records from the police officer's personnel file that fall into the categories identified in the first step, and to determine whether they are relevant to the underlying case and compliant with various statutory limitations. For example, Evidence Code section 1045 prohibits the disclosure of information that is more than five years old, contains the conclusions of any officer investigating a complaint, and facts that are so remote as to make disclosure of little or no practical benefit. The court's review is done in chambers with the university's representatives present, and is called an in camera review.

Defendants sometimes seek records under the broad umbrella of "dishonesty." If there should be some evidence of dishonest behavior in the arresting officer's file, the judge is required to look at the circumstances in which the dishonest behavior occurred and to determine whether they are close enough to the factual circumstances presented in the defendant's particular case before determining whether to release any information from the file. Courts have ruled that a police officer's credibility is not automatically at issue in every case. There are some other general descriptors used to justify the release of records, such as "improper tactics" or

“aggressive behavior.” The court is required to engage in the same careful analysis of relevance to the particular charge involved before records can be produced. The relevance of any records of complaint against an arresting officer is determined by the nature of the complaints made, not by whether those complaints were sustained.

Pitchess motions have been ruled to be constitutional. The range of objections that can be raised to these motions is therefore limited. The Office of General Counsel will file a response in those instances in which it is determined that the good cause threshold is satisfied, that advises the court of the standards to be used in the in camera review. It also provides advance notice that an attorney will not be present at the hearing, but that a university police officer will attend with all potentially relevant records. In cases where the motion does not satisfy the good cause showing, the Office of General Counsel will file an Opposition Memorandum, and may or may not attend the hearing, depending on the severity of the particular circumstances. A university police officer will also be required to attend the hearing in this situation with all potentially relevant records.

## V. The Hearing

On the day set for the hearing, all records included in the officer’s personnel file that fall within the types of records sought in the motion must be brought to the court. Documents in the officer’s personnel file which are not requested in the motion should not be brought to court. A university police officer must be in attendance in the capacity of custodian of the records. The judge may conduct an in camera review, if appropriate, and then order that some or all of the records requested in the motion be produced to the attorney for the criminal defendant. It is more common for the court to require no records to be produced, and rather to supply names and addresses of witnesses from the personnel file to the moving party. A court reporter should always be requested for any in camera review so that a record of the process is made.

In those cases in which the custodian of the records does not bring the entire personnel file for the court’s in camera review, the custodian must provide to the court a record of what documents or categories of documents in the complete personnel file were not brought to court, and an explanation as to why those records were deemed irrelevant or otherwise non-responsive to the Pitchess request. (*People v. Wycoff* (2008) 78 Cal Rptr.3d 907) The judge should restrict the use of any information released to that case only, by means of a protective order. If such an order is not automatically entered, it should be requested at the time the judge announces the ruling. The custodian of the records should maintain a separate copy of all the documents that are disclosed.

In every Pitchess motion, the attorney assigned to the campus is available to discuss any issues raised by the proceeding.

**APPENDIX:**

**SAMPLE LETTER TO POLICE OFFICER WHOSE RECORDS ARE REQUESTED**

Police Officer  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXX, CA.

Re: Pitchess Motion For Your Personnel Records

The CSU has been served with a motion under Evidence Code sections 1043-47 in People v. \_\_\_\_\_, Case No. \_\_\_\_\_. The motion requests [describe records requested] from your personnel file because defendant [Name] is arguing that [describe alleged police misconduct].

These records are subject to an in camera review by the court before any production will be permitted. The matter is set for hearing in the Superior Court for the County of \_\_\_\_\_ on \_\_\_\_\_, 200\_ at \_\_\_\_\_m. The hearing process is described in the Pitchess Motions Manual prepared by the CSU Office of General Counsel, which is on the web at: [http://www.calstate.edu/gc/Docs/Pitchess\\_Motions.doc](http://www.calstate.edu/gc/Docs/Pitchess_Motions.doc)

The CSU is evaluating the motion. A response or opposition will be filed by the university as described in the Pitchess Motion Manual. You are entitled to be represented at that hearing, at your own expense, if you so desire. In any case, a university police officer will attend the hearing with the appropriate records.

Further information about this matter is available from \_\_\_\_\_.

Sincerely,

XXXXXXXXXXXXXXXXXXXX  
Chief of Police