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SPECIAL UPDATE

LAW ENFORCEMENT AND PUBLIC EMPLOYERS

July 22, 2016

Court of Appeal Holds Dashboard Camera Video Footage Is Not Part of a Peace Officer's Personnel File For Purposes of Pitchess Motions

On Tuesday, the Court of Appeal held that a video of an arrest captured by a patrol car's dashboard camera is not a confidential "personnel record" under Penal Code sections 832.7 or 832.8 and thus, a Pitchess motion was not required for its disclosure. In December 2012, Eureka police officers arrested a minor. The arrest was recorded by one of the officers' in-car video equipment. A citizen lodged a complaint regarding the officers' "handling of the minor," and the Eureka Police Department conducted an internal affairs investigation. The arresting officer was initially charged with a misdemeanor but after experts hired by the prosecution and defense reviewed the evidence, including the video, the charges were dropped. A local reporter wrote a few articles about the arrest and later made several requests for a copy of the video under the California Public Records Act Request. The minor had consented to the release of the video. The City opposed the request and claimed dashboard camera videos come within section 832.8, subdivision (d) because the police department might eventually use the videos to evaluate whether to initiate disciplinary proceedings against a peace officer. The City also claimed that the video is a "personnel record" under section 832.8, subdivision (e), which encompasses "complaints, or investigations of complaints, concerning an event or transaction in which he . . . participated, or which he . . . perceived, and pertaining to the manner in which he . . . performed his . . . duties." According to the City, the arrest video comes within section 832.8, subdivision (e) because the police department "pulled a recording of the incident" during the internal affairs investigation and the "video served as the backbone of the Internal Affairs investigation and was intimately relied upon by the investigating officers." The Court disagreed and stated, "That officers involved in an incident might face an internal affairs investigation or discipline at some unspecified point in the future does not transmute arrest videos into disciplinary documentation or confidential personnel information." Moreover, the court reviewed the record and found no evidence the "video served as the backbone of the Internal Affairs investigation and was intimately relied upon by the investigating officers." The Court also stated, "Even if we assume for the sake of argument the arrest video was considered or relied upon during the internal affairs investigation, it would not transmute the video into confidential personnel information." The arrest video "was generated independently and in advance of the administrative investigation" and thus, was not a confidential personnel record under the Penal Code.

City of Eureka v. Superior Court (CA1/5 A145701 7/19/16)

<http://www.courts.ca.gov/opinions/documents/A145701A.PDF>