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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

TARIQ CHAMBERS, Petitioner, v. THE APPELLATE DIVISION OF THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent;	D047661 (San Diego County Super. Ct. No. GIC856399)
THE SAN DIEGO POLICE DEPARTMENT, Real Party in Interest.	

PROCEEDINGS in mandate after the superior court (Browder Willis and Stephanie Sontag, Judges) declined to order disclosure of *Pitchess* information and the appellate division (Louis R. Hanoian, Peter C. Deddeh, and Robert J. Trentacosta, Judges) denied petitioner's writ petition. Petition granted.

In his petition, Tariq Chambers contends the trial court erred when it declined to disclose evidence relevant to his defense of excessive force, namely, the identity of a complaining citizen who Chambers's counsel knew to exist by virtue of her assignment to an unrelated case involving the same officer, as well as a report prepared by defense investigators who had interviewed the citizen. We conclude the trial court abused its discretion in withholding disclosure of *Pitchess* information that is indisputably relevant to Chambers's excessive force defense. We further conclude that, under the circumstances of this case, the protective order mandated by Evidence Code section 1045, subdivision (e)[1] does not encompass derivative information generated as a result of a prior successful *Pitchess* motion as to the same police officer in the unrelated case, and that Chambers is entitled to obtain that information from the prior litigant. Accordingly, we grant Chambers's writ petition with directions set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2004, Chambers was charged with resisting, delaying or obstructing a peace officer (Pen. Code, § 148, subd. (a)(1)) stemming from an incident in which San Diego Police Officer S. E. and another officer appeared at Chambers's apartment in response to a neighbor's 911 call. In January 2005, Chambers filed a pretrial *Pitchess*[2] motion before Superior Court Judge Browder Willis to discover information in the personnel file of the officers concerning evidence or complaints of excessive force,

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1 All statutory references are to the Evidence Code unless otherwise indicated.

2 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

aggressive conduct, unnecessary violence and force, false arrest or detention, false statements in reports, false claims of probable cause or dishonesty. In an accompanying declaration, defense counsel averred that on the day in question, the officers appeared at Chambers's apartment falsely telling him they were responding to a call from within the residence, and asked to enter his home to check on the other inhabitants. According to counsel, La Tasha Woods, who resided with Chambers, exited the apartment with two young children, and when Chambers tried to join her and the officers outside, he was physically blocked by Officer E. When Chambers walked back into his living room, Officer E. "suddenly and aggressively" used pepper spray on him, pulled his gun, and threatened to shoot Chambers while he was scrambling for ice and cold water in the kitchen to sooth his burning face. Counsel averred that both officers lied about the events on the day of Chambers's arrest; in particular, that Officer E. lied about whether Chambers had "rushed" him as if he were going to attack him, thus justifying Officer E.'s use of pepper spray. Counsel stated Chambers did not rush, physically threaten or verbally indicate he wanted to make physical contact with either officer. Counsel further averred that Officer E. overreacted and used excessive force when he sprayed Chambers without provocation or justification. Considering the motion in February 2005, the court found good cause to inspect the officers' personnel, divisional and internal affairs files, but found no relevant information within them to disclose on Chambers's claims of fabrication and excessive force.

In August 2005, Chambers filed a "supplemental" *Pitchess* motion seeking information from Officer E.'s personnel file that had been disclosed via the *Pitchess*

process in a different case involving a charge of resisting arrest, *People v. Washington* (Super. Ct. San Diego County, No. M947152) (*Washington*). Chambers's counsel averred she had learned of the existence of this information after overhearing another public defender mention he had received *Pitchess* information about Officer E. in the *Washington* matter. Thereafter, she was reassigned to the *Washington* case and learned the identity of a complaining citizen disclosed in that case.[3] Chambers asked the court to (1) inquire whether Officer E.'s file was complete when it heard his first *Pitchess* motion; (2) reconsider releasing the names contained in Officer E.'s file in his case; and (3) permit his defense counsel to use "derivative information" from the *Washington* matter, i.e., materials generated by the public defender's office stemming from its investigation of the *Pitchess* information disclosed in that case.

Chambers's supplemental *Pitchess* motion was brought before Superior Court Judge Stephanie Sontag. Judge Sontag declined to reconsider Judge Willis's ruling. However, she considered on the merits and denied defense counsel's request that Chambers be permitted to use the derivative information from *Washington* in his case, concluding that information could not be exchanged between the two cases.

Thereafter, Chambers refiled his supplemental motion and on September 30, 2005, appeared before Judge Willis requesting that he reconsider his first *Pitchess* ruling. The

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3 The court in *Washington* had disclosed the name of four persons from Officer E.'s files. In this writ proceeding, Chambers requests identity and derivative information pertaining to only one of those persons, whose claim was summarized by Chambers's counsel in a sealed declaration. We will refer to that person as the complainant or complaining citizen in this opinion.

city attorney on behalf of the San Diego Police Department (Department) opposed the motion in part on grounds it was not timely served and filed and did not accurately identify the time and place of the motion under section 1043, subdivisions (a) and (b). Judge Willis re-reviewed the files in camera to ensure he had not overlooked anything, but again concluded there was no relevant information within the files subject to disclosure in Chambers's case. The court confirmed the file was complete.

Chambers petitioned for a writ of mandate or alternatively habeas corpus in the Superior Court's Appellate Department, requesting that the court (1) set aside the September 30, 2005 order and enter a different order disclosing the identity of the complaining citizen in the *Washington* case and the defense investigation report relating information from that witness and (2) review and ascertain whether the record presented in camera at the *Pitchess* hearing included the citizen's statement and rule upon the propriety of the custodian's record production. In separate orders, the court denied Chambers's petitions. Chambers filed the present writ petition.

DISCUSSION

I. *Trial Court's Power to Hear Chambers's Motion*

Preliminarily, we address and reject Department's procedural challenge to the trial court's ability to hear Chambers's second *Pitchess* request. Department contends the court exceeded its jurisdiction by reviewing Officer E.'s file a second time because Chambers did not provide the required 16 days notice of his *Pitchess* motion under section 1043, subdivision (a). Department argues that as a result of this procedural error, the court could not have disclosed any information even if it found it relevant. It further

asserts that given the passage of time from the court's first *Pitchess* order issued in February 2005, Chambers is not entitled to speedy writ relief from that decision.

Section 1043 sets forth the procedures and notice that must be given to the governmental agency having custody and control of peace officer personnel records. In part, it provides that notice of a *Pitchess* motion shall be given at the times prescribed by Code of Civil Procedure section 1005, subdivision (b), requiring that motions must be served and filed at least 16 days before the hearing. (Evid. Code, § 1043, subd. (a); Code Civ. Proc., § 1005, subds. (a)(6), (b).) Subdivision (c) of Evidence Code section 1043 requires that the defendant fully comply with the notice provisions unless he or she shows good cause for noncompliance or the governmental agency waives the requirement. The court may also prescribe a shorter period for notice. (Code Civ. Proc., § 1005, subd. (b).).

Here, over Department's objection of untimely notice, the court considered and reached the merits of Chambers's motion for a supplemental *Pitchess* disclosure even though the motion was served and filed only 14 days before the hearing. The court responded to Department's argument by explaining the motion raised a unique question as to whether there was a possibility that its initial review was incomplete or whether it had overlooked something: "[T]hen the issue, as defense has raised, is can the Court reconsider or reevaluate to determine whether or not it missed something, and I know that in some way is allowing [Chambers] the benefit of knowledge raised at another *Pitchess* motion, but I think the argument is that now that I am in possession, the Court is in possession, that there may have been error, may have been something overlooked, should

I in good faith hear that, and that's where I stand. [¶] If I am made aware that maybe I missed something, then I think I'm obligated to at least hear that out."

As we construe its remarks, the trial court granted what it deemed to be a motion for reconsideration of Chambers's initial *Pitchess* motion, which it had the inherent power to entertain regardless of the foregoing statutory *Pitchess* procedures. This court has explained that "[i]n criminal cases there are few limits on a court's power to reconsider interim rulings." (*People v. Castello* (1998) 65 Cal.App.4th 1242, 1246.) "The California Supreme Court has often recognized the 'inherent powers of the court . . . to insure the orderly administration of justice.' [Citations.] In criminal cases, the court has acknowledged 'the inherent power of every court to develop rules of procedure aimed at facilitating the administration of criminal justice and promoting the orderly ascertainment of the truth.' [Citations.] . . . [¶] Some of the court's inherent powers are set out by statute, but the inherent powers of the courts are derived from the Constitution and are not confined by or dependent on statute. [Citations.] [¶] A court's inherent powers are wide. [Citations.] They include authority to rehear or reconsider rulings: '[T]he power to grant rehearings is inherent, — is an essential ingredient of jurisdiction, and ends only with the loss of jurisdiction.' [Citations.] . . . [¶] . . . [¶] A court could not operate successfully under the requirement of infallibility in its interim rulings. Miscarriage of justice results where a court is unable to correct its own perceived legal errors, particularly in criminal cases where life, liberty, and public protection are at stake. Such a rule would be ' "a serious impediment to a fair and speedy disposition of causes. . . ." ' " (*Castello*, *supra*, 65 Cal.App.4th at pp. 1247-1249 [rejecting application of rules of Civil

Procedure governing reconsideration to criminal cases]; see also *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 388-389.) We uphold the court's ruling based on the exercise of its inherent powers.

Alternatively, we interpret the court's comments as impliedly ruling that Chambers had demonstrated good cause in his supplemental motion for a lesser period of notice by raising the possibility that the court may have missed information in Officer E.'s personnel files. As to that interpretation, the trial court's leniency as to the notice requirement is supported by the language of Evidence Code section 1043, subdivision (c), which allows for less than full compliance with statutory notice upon a good cause showing. Furthermore, a court may properly apply the doctrine of substantial compliance to statutory requirements when the essential statutory purposes are satisfied and strict compliance is not necessary to serve the statutory intent. (*Los Angeles Chemical Co. v. Superior Court* (1990) 226 Cal.App.3d 703, 712-713.) In this case, the City Attorney had actual notice of the motion and an opportunity to respond, and there is no contention (nor do we perceive) that the shortened notice caused any prejudice. Accordingly, we proceed to Chambers's substantive contentions.

II. *Pitchess Rulings*

A. *Legal Principles*

In *Pitchess*, the California Supreme Court held that "a criminal defendant has a limited right to discovery of peace officer personnel records in order to ensure 'a fair trial and an intelligent defense in light of all relevant and reasonably accessible information.' " (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1038, fn. 3 (*Alford*), quoting *Pitchess*,

supra, 11 Cal.3d. at p. 535.) Based on the accused's need for disclosure as well as an officer's privacy expectations, and to prevent abuses, the Legislature codified the court's decision in *Pitchess* and set out procedures designed to implement the court's discovery rule. (Pen. Code, §§ 832.5, 832.7, 832.8; Evid. Code, §§ 1043-1047; see *People v. Mooc* (2001) 26 Cal.4th 1216, 1226 (*Mooc*); *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019 (*Warrick*).) Under these procedures, a defendant, by written motion, may obtain information contained in a peace or custodial officer's personnel records by providing certain identifying information, a declaration setting out good cause for disclosure, and a showing of materiality to the subject matter of the pending litigation. (Evid. Code, § 1043, subds. (a), (b)(2), (b)(3); *Mooc*, at p. 1226.) When presented with such a motion, the trial court rules as to whether there is good cause for disclosure. (§§ 1043, 1045.) If the court finds the defendant has made the requisite good cause showing, the custodian of the officer's records should bring to the court all "potentially relevant" documents and, in camera outside the presence of the defense or prosecution, the trial court determines whether any of the records are to be disclosed. (*Mooc*, at p. 1226.) In determining relevance, the court examines the information in chambers in conformity with Evidence Code section 915, which governs disclosure of information on a claim of privilege and permits in camera review when the court cannot rule on the claim without requiring disclosure of the assertedly privileged information. (§§ 915, 1045, subd. (b).) During the in camera inspection, the court must exclude from disclosure (1) complaints concerning conduct occurring more than five years before the event that is the subject of the litigation in which *Pitchess* disclosure is sought, (2) the "conclusions of any officer

investigating a complaint," and (3) facts "so remote as to make disclosure of little or no practical benefit." (§ 1045, subd. (b); *Warrick*, *supra*, 35 Cal.4th at p. 1019.)

If the court rules in favor of disclosing confidential information, which ordinarily involves revealing only the name, address and telephone number of any prior complainants and witnesses and the dates of the incidents in question (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 84; *Warrick*, *supra*, 35 Cal.4th at p. 1019), section 1045 mandates entry of a protective order providing that the information "disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law." (§ 1045, subd. (e); *Alford*, *supra*, 29 Cal.4th at pp. 1037-1039.) Further, "[t]he court, '[u]pon motion seasonably made by the governmental agency which has custody or control of the records to be examined or by the officer whose records are sought' . . . , may make such orders 'which justice requires to protect the officer or agency from unnecessary annoyance, embarrassment or oppression.' " (*Mooc*, *supra*, 26 Cal.4th at p. 1227, citing § 1045, subd. (d).)

We review the trial court's disclosure ruling for abuse of discretion. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Jackson* (1996) 13 Cal.4th 1164, 1220; *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086 (*Haggerty*).)

B. *Chamber's Contentions*

Chambers contends Judge Willis erred by declining to order disclosure of (1) the name of the complaining citizen previously disclosed in the *Washington* case and (2) the derivative investigation report generated as a result of that earlier *Pitchess* disclosure detailing the circumstances of that citizen's complaint against Officer E. As to the

Pitchess identifying information, Chambers argues it is relevant and material to his claim of excessive force, and not subject to any of the section 1045, subdivision (b) disclosure restrictions. As for the derivative information, Chambers maintains the issue presented is unique and not governed by the California Supreme Court's holding regarding shared *Pitchess* discovery in *Alford*, *supra*, 29 Cal.4th 1033, because his attorney knows the information to exist and believes it is relevant to Chambers's claim of excessive force against Officer E. and the officer's credibility. Chambers contends he is deprived of the right to competent counsel under these circumstances because he is denied access to his attorney's skill and knowledge of critical information in his defense.

1. *Trial Court's Relevance Determination Regarding Pitchess Information From Officer E.'s Files*

Section 1045 sets out a broad relevance standard for a trial court's in camera determination of what documents must be ultimately disclosed under a *Pitchess* request: "Section 1045 provides 'Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of those investigations, concerning an event or transaction in which the peace officer . . . participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, provided that information is relevant to the subject matter involved in the pending litigation.' [Citation.] This subdivision is 'expansive.' [Citation.] Relevant information under section 1045 is not limited to facts that may be admissible at trial, but may include facts that could lead to the discovery of admissible evidence." (*Haggerty*, *supra*, 117 Cal.App.4th at p. 1087, emphasis omitted,

citing *People v. Memro* (1985) 38 Cal.3d 658, 681-682 & *People v. Hustead* (1999) 74 Cal.App.4th 410, 423.) If the court determines the requested information is relevant and does not fall within the exceptions set forth in section 1045, subdivisions (b) and (c), the court should generally order production subject to a protective order providing " 'that the records disclosed . . . may not be used for any purpose other than a court proceeding pursuant to applicable law.' " (*Id*. at p. 1088.)

Under these broad relevance standards, the court erred when it did not reveal the identity of the complainant previously disclosed in the *Washington* case based on its in camera review of Officer E.'s personnel files. We have reviewed the sealed reporter's transcripts of the in camera hearings of Chambers's *Pitchess* requests, as well as the personnel files of Officer E. and other documents provided by the custodian of records at the time of the court's first and second review on September 30, 2005. Our review reveals that the citizen's complaint against Officer E. is sufficiently similar to the subject matter raised by Chambers's *Pitchess* motion such that the information might be admissible or might lead to other admissible evidence in Chambers's defense. The court's decision not to disclose the identity of the complainant was not accompanied by any specific reasoning and we perceive no reasonable basis for its ruling.

Department urges that the trial court's decision was well within its broad discretion; it points out the underlying circumstances, threats posed and force used in this case and *Washington* differ, which might compel judges faced with *Pitchess* requests in each case to reach different results. Our holding, however, does not turn on a comparison of the circumstances between this case and *Washington*, it is based on Chambers's

Pitchess motion, the averments of his counsel, and an assessment of the materiality of Officer E.'s files produced in camera to the court in light of section 1045's broad standards.

Relying on *People v. Jackson* (1996) 13 Cal.4th 1164 and *City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, Department further argues only very similar incidents of excessive force occurring in similar contexts may be disclosed; that not every claim of excessive force is subject to disclosure. These authorities do not compel a different result. In *Jackson*, the defendant asserted his confession was coerced, and the court upheld the trial court's rejection of his discovery request for all excessive force complaints against his arresting officers. " 'Since [defendant] sought the information to bolster his claim of involuntariness in the interrogation setting, only complaints by persons who alleged coercive techniques in questioning were relevant.' " (*Jackson*, *supra*, 13 Cal.4th at p. 1220.) In *City of San Jose*, the appellate court found fault in the defendant's good cause showing intended to trigger the right to in chambers inspection under section 1043, subdivision (b)(3), and also concluded his discovery request was overly broad because he had not requested records pertinent to a "specific factual scenario." (*City of San Jose*, 67 Cal.App.4th at pp. 1149-1150.) Because the defendant had not established a specific factual scenario establishing a plausible factual foundation for his allegations, his requests for general categories of records (i.e., related to "illegal search and seizure") were insufficient to permit the trial court to make a relevance determination. (*Id*. at p. 1150.) Unlike these cases, Chambers set out a specific factual scenario in which he claims Officer E. used excessive force, including unreasonably

pepper spraying him, in the process of arresting him at his residence. Chambers denies resisting arrest or failing to comply with the officer's commands. That scenario is close enough in context to the complaint disclosed in the *Washington* case to require a relevance finding and disclosure under section 1045, subject to an appropriate protective order under section 1045, subdivision (e) and, if the trial court so exercises its discretion on Department's motion, subdivision (d).

2. *Derivative Information*

We also order the trial court to disclose the derivative defense investigation report generated by the public defender's office as a result of the prior *Pitchess* disclosure in the *Washington* case. As we explain, in the present case the derivative report is not subject to the protective order mandated by section 1045, subdivision (e). Our conclusion requires a discussion of *Alford, supra*, 29 Cal.4th 1033.

In *Alford*, the California Supreme Court considered the scope of the mandatory protective order imposed by section 1045, subdivision (e).[4] At issue was whether a defendant in possession of information disclosed following a successful *Pitchess* motion could share that information with defendants in cases other than the one in which the information was being sought. (*Alford, supra*, 29 Cal.4th at pp. 1039-1040, 1042.) Adopting the reasoning of the court of appeal, the high court concluded the statutory

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4 Section 1045, subdivision (e) provides in full: "The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law."

scheme did not permit such sharing: "[B]ecause section 1045[, subdivision] (e) is part of an overall statutory scheme that carefully balances peace officers' privacy interests in their personnel records against defendants' rights of access to information relevant to their defense, and because disclosure of information contained in such records is permitted only on a showing of materiality to a particular case, to interpret the statute as allowing a defendant to share such information with other defendants would defeat the purpose of the balancing process." (*Id*. at p. 1042.)

The court in *Alford* limited its holding to "the information disclosed pursuant to a *Pitchess* motion . . . [and] express[ed] no views [concerning] the treatment of information developed as a result of the receipt of information disclosed pursuant to a *Pitchess* motion." (*Id.* at p. 1037, fn. 2.) In his concurring and dissenting opinion, Justice Moreno pointed out the majority's holding left open the question "whether a section 1045 [, subdivision] (e) protective order (a) may only restrict the use of the actual information disclosed by the trial court – i.e., the complainant's and witness's name, address, telephone number and the date of the incident; or (b) may also encompass the direct fruits of the information developed during this independent investigation – e.g., a complainant's or disclosed witness's statement; or (c) may encompass other information obtained during this independent investigation – e.g., physical evidence (such as a photograph of injuries), or a statement obtained from a newly discovered witness." (*Id.* at p. 1063.)

Under *Alford*, a litigant who obtains *Pitchess* information is given authorized access to certain information, but it "may not be used for any purpose" (§ 1045, subd. (e)) beyond the case in which the information was ordered disclosed. In such cases, the

litigant may conduct further investigation to develop evidence material to the pending litigation. While a section 1045, subdivision (e) protective order expressly limits a litigant's use of the *disclosed* information, investigation reports or other evidence developed as a result of the use of the disclosed information is the work product of the successful *Pitchess* movant, and is not subject to this limitation. This follows because statements obtained by the litigant from the disclosed complainant or witness are not materials obtained from the peace officer's personnel records maintained by any state or local agency, although a statement of the witness may be included in those records. Rather, the statements obtained by investigation following a successful *Pitchess* motion are available to anyone should the complainant be willing to discuss the matter; they are not compelled by any court process and the substance of interviews that a complainant gives to a litigant is not and does not become part of the peace officer's personnel record maintained by the employer. The court cannot constitutionally prevent a litigant from disseminating information that is acquired from efforts independent from formal discovery processes. (See *In re Marriage of Candiotti* (1995) 34 Cal.App.4th 718, 723-726.)

Here, we have already held that the *Pitchess* identifying information (i.e., name, address, and telephone number of the complainant) is to be disclosed to Chambers pursuant to his own *Pitchess* motion. Under these circumstances, Chambers's use of the derivative materials generated in the *Washington* case is not constrained by the protective order in either case, and the litigant in *Washington* may disclose those materials to

Chambers without limitation or redaction.[5] When a trial court makes a particularized determination that a litigant has justified access to specific *Pitchess* information about a complainant, that litigant is entitled to investigate the underlying details or facts of that complaint from any available source. When a later court faced with another *Pitchess* request involving the same officer independently exercises its role and concludes another litigant has shown the relevance of the same identifying complainant information (or as here, when the reviewing court determines the defendant has made such a showing), we see no reason why that second litigant should not have the same access to the duplicative information as the first. That litigant obtains nothing beyond that which the *Pitchess* statutory scheme contemplates he is able to obtain, and the first *Pitchess* litigant has not permitted the information to be used for any court proceeding in which a *Pitchess* relevance determination has not been made. In our view, a litigant who has independently satisfied the *Pitchess* relevance requirements as to a specific complainant, as here, is authorized to learn the identity of that same complainant in the possession of other successful *Pitchess* litigants.

As *Alford* explains, in the *Pitchess* process, the court must strike a careful balance between preserving a peace officer's privacy and the defendant's need to gather evidence relevant to his or her defense. (*Alford, supra*, 29 Cal.4th at p. 1042.) These purposes are not compromised by deeming statements gathered as a result of the disclosed information

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[5] Our opinion is not intended to address other factual situations, as where a person seeking disclosure of derivative information from a prior case has not made a successful *Pitchess* motion in a subsequent case.

outside the ambit of the protective order. The protective scheme of section 1045, subdivision (e) is not impaired because that provision is not designed to delimit the sources from which peace officer information may be obtained, it is designed to assure that use of the information obtained by particular defendants is limited to the proceeding in which the court has made a specific relevance determination. The defendant remains able to prepare a defense, and the officer's privacy interest in the data contained in his personnel file is not affected beyond that which occurred when *Pitchess* disclosure was ordered. In sum, the success of a subsequent *Pitchess* motion that discloses *Pitchess* information duplicative of a prior *Pitchess* motion permits the sharing of duplicative confidential *Pitchess* information between the successful movants without violating the section 1045, subdivision (e) protective order in either case.

DISPOSITION

Let a writ of mandate issue directing the trial court to vacate the August 23, 2005 and September 30, 2005 orders and to enter a new and different order (1) disclosing to Chambers the name, address and telephone number of the complainant disclosed in the *Washington* case and referenced by Chambers's counsel in her sealed declaration and (2) permitting the public defender to use the derivative report resulting from the investigation of the complainant in the *Washington* matter. The stay issued on December 30, 2005, will be vacated when the opinion is final as to this court. Our order directing the

custodian of the Department to preserve all records submitted for the in camera review will expire upon issuance of the remittitur.

O'ROURKE, J.

WE CONCUR:

McDONALD, Acting P. J.

IRION, J.