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To Whom This May Concern:

In response to public records requests received by the Wisconsin Department of Justice (DOJ), a copy of DOJ's Division of Criminal Investigation (DCI) investigative case file for DCI's investigation into the September 17, 2020 death of Elliott Johnson has been prepared for release pursuant to Wis. Stat. § 19.35(1)(a).

The DCI case in question is ***20-7266 Elliot T. Johnson - Death Investigation***. A copy of the case file reports has been made available online on the Wisconsin Department of Justice's website at https://www.doj.state.wi.us/office-open-government/department-justices-responses-public-records-requests. Access to copies of related photographs, audio recordings, and video recordings may be obtained by contacting the DOJ Communications Office at dojcommunications@doj.state.wi.us.

Certain information was redacted from the records, either because specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test. These redactions are described below. In addition, these records were prepared for release mindful that the purpose of the Wisconsin public records law is to shed light on the workings of government and the official acts of public officers and employees. *Building and Constr. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

Well-established public policy recognizes the privacy rights of a deceased person's surviving loved ones. *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004). In preparing these records for release, the Wis. Stat. § 19.35(1)(a) public records balancing test was applied, and the public interest in treating surviving loved ones of the deceased with respect for their privacy and dignity outweighed any public interest in disclosure of the following records:

- Graphic images and descriptions of Mr. Johnson's injuries, condition, and life-saving measures taken at the incident scene from videos, photographs, and reports.

- The full names of Mr. Johnson's family members. Family names were redacted to initials only, except where they share the same last name as Mr. Johnson.

In performing the balancing test, the public interest in protecting the privacy of this family, and in facilitating cooperation with law enforcement in sensitive investigations, also

outweighs any public interest in disclosure of the described records. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶ 38, 254 Wis. 2d 306, 646 N.W.2d 811.

One witness in this investigation was a crime victim. Wisconsin Const. art. I, § 9m requires that crime victims be treated with "fairness, dignity and respect for their privacy." Related Wisconsin statutes recognize that this state constitutional right must be vigorously honored by law enforcement agencies and that crime victims include both persons against whom crimes have been committed and the family members of those persons. Wis. Stat. §§ 950.01 and 950.02(4)(a). The Wisconsin Supreme Court, speaking about both Wis. Const. art. I, § 9m, and related victim rights statutes, has instructed that "justice requires that all who are engaged in the prosecution of crimes make every effort to minimize further suffering by crime victims." *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ¶ 26, 278 Wis. 2d 216, 692 N.W.2d 623. Even in those situations in which a criminal prosecution does not occur, it is the policy of our office to consider the privacy rights of those who could be considered victims entitled to these protections when applying the Wis. Stat. § 19.35(1)(a) balancing test regarding the release of records. Pursuant to the balancing test, these public policies requiring that crime victims be treated with respect for their privacy and dignity outweigh any public interest in disclosure of the name or other personally identifying information of this individual where present within DCI case file records. Accordingly, the victim's full name and other personally identifying information were redacted from the reports prior to release.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in protecting the ability of law enforcement to gather information when conducting sensitive investigations and in protecting the privacy of citizens involved in those investigations outweighs any public interest in disclosure of information that could identify witnesses and other individuals referenced by witnesses. *Cf.* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of critical incidents, public disclosure of the full names and other identifying information for individuals interviewed or mentioned during interviews could expose these individuals to unwanted public scrutiny, criticism, or pressure from outside sources, which could have a chilling effect on future witnesses' willingness to come forward and cooperate with law enforcement in investigations of similar incidents. Accordingly, the following information was redacted from the records prepared for release:

- Names of witnesses, family members, and others mentioned by individuals interviewed. (Initials for the names of these individuals as well as the last name of family members who share the same last name as Mr. Johnson were not redacted.)

- Other information that would identify the above individuals, including dates of birth, home addresses, and personal telephone numbers for these individuals.

- An audio recording of a witness interview.

- The license plate number and Vehicle Identification Number (VIN) of the vehicle driven by Mr. Johnson.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law

enforcement report outweighs any public interest in information about the conduct of governmental affairs. Furthermore, the public interest in protecting the privacy of these individuals, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of this described information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 38.

In addition to the overall redactions set forth thus far, certain other specific types of redactions were made from the records prior to release for the reasons explained below.

Birthdates, social security numbers, and driver's license numbers of individual persons were redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the public policy in favor of protecting the confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure of the dates of birth, social security numbers, and driver's license numbers.

Home addresses, personal telephone numbers, and personal electronic mail addresses were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest in disclosure of this information is outweighed by the public interest in the expectation of privacy on the part of individuals in their personal lives and in protecting the sources of law enforcement information and encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. *Cf.* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Additionally, well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer's employees is expressed in Wis. Stat. § 19.36(10)(a). The same underlying public policy of protecting the confidentiality and privacy of personal contact information outweighs any public interest in disclosure of this information.

Personal telephone numbers of law enforcement officers were redacted pursuant to Wis. Stat. § 19.36(10)(a). To the extent such records and information are not directly governed by Wis. Stat. § 19.36(10)(a), the information was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer's employees is expressed in Wis. Stat. § 19.36(10)(a). The same underlying public policy of protecting the confidentiality and privacy of personal contact information and the public interest in the expectation of privacy on the part of individuals in their personal lives outweigh any public interest in disclosure of this information.

Direct telephone numbers assigned to specific law enforcement officers were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these numbers are not made public and must remain confidential. The strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of these direct telephone numbers of the law enforcement officers. Allowing the direct telephone numbers of the law enforcement officers to become publicly known would have an adverse effect on the officers' future ability to investigate criminal activity because the phones are used for undercover calls and other investigative business where it is essential to prevent a caller from recognizing the number as belonging to law enforcement in order to protect the safety of law

enforcement personnel, informants, and others involved in an investigation. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. General use, publicly available telephone numbers for the law enforcement agencies involved were not redacted from the records.

Information containing specific details regarding weapons assigned to law enforcement personnel was redacted to preserve the safety, security, and effectiveness of the law enforcement officers. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in effective investigation of crime and protection of public safety, including protecting the ability of law enforcement to respond in emergency situations without jeopardizing officer safety or undermining officer effectiveness by revealing their equipment and techniques, outweighs any public interest in disclosure. *Cf.* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Certain sensitive information involving confidential law enforcement techniques was redacted to preserve the effectiveness of those techniques, which would be undermined by disclosure. Release of this information would threaten the integrity of future law enforcement investigations; would significantly impair the future ability of law enforcement to investigate criminal activity effectively; and would put at risk the safety of the public, law enforcement personnel, informants, witnesses, and others involved in law enforcement investigations. In performing the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined the strong public interest in protecting public safety; in the safety of law enforcement personnel and others involved in law enforcement investigations; in effective investigation and prosecution of criminal activity; and in protecting the ability of law enforcement to use its techniques effectively and gather information confidentially when conducting sensitive investigations outweighs any public interest in disclosure of this information. *See* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41; *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶¶ 13, 18, 21, 372 Wis. 2d 460, 888 N.W.2d 584.

Specific information identifying routine shifts worked by law enforcement officers was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the officers, the officers' families, and the officers' homes. DOJ determined the public interest in protecting the security of the officers, the officers' families, and the officers' homes outweighs any public interest in information regarding their routine shifts. Details regarding the specific shifts worked by the officers involved in the September 17, 2020 critical incident were not redacted from the records.

Case agent names were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Providing information that would identify current undercover law enforcement officers or officers who might perform undercover work could endanger the safety of those officers who are working, or could work, undercover. Providing this information could also jeopardize the operations of undercover officers who may be functioning in a role in which their true status as an active police officer is unknown to subjects, targets, witnesses, and others who interact with that undercover officer. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. In applying the balancing test, DOJ concluded the public interest in revealing this information is outweighed by the public interest in protecting the safety of law enforcement officers and promoting effective law enforcement investigations. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

DCI case report ***18-6900/23*** includes the name of a federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) special agent. DOJ has consulted with ATF's legal counsel about disclosure of the names of ATF personnel because the ability of DOJ to work effectively with ATF on future law enforcement matters requires us to respect requested confidentiality regarding ATF employees and information. ATF advised us that, pursuant to 5 U.S.C. § 552(b)(6) and (b)(7)(C), it protects the names of its agents from disclosure because of the nature of their job, which entails a significant threat of retaliatory action against known agents. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. Federal personnel operate with the understanding that information regarding them and their activities are subject to disclosure under the provisions of the federal Freedom of Information Act (FOIA) and that they are afforded the protections of that federal law. There is a public interest in cooperating with the ATF so as to encourage the current and future joint law enforcement efforts of our agencies. Disclosure of the agent's name could impair cooperative law enforcement efforts between DOJ and the ATF. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the underlying public interest in safety of the ATF agent and in the effective investigation of crime and effective law enforcement, which is furthered by honoring the ATF's desire to not release its agents' names, outweighs any public interest in disclosure of the agent's name. *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Additionally, pursuant to the balancing test, the disclosure of the agent's name would adversely impact the safety and privacy interests of the agent and the agent's family. Law enforcement agencies have been made aware that their personnel are at increased risk of being targeted by groups or individuals who use publicly available information for cyber attacks, doxxing, or swatting activities against law enforcement personnel and their families. Providing the federal agent's name could subject the agent or the agent's family to cyber, financial, or personal attacks, including identity theft, stalking, harassment, and threats. Many of these threats against law enforcement personnel have already manifested. Applying the balancing test, these likely threats also weigh in favor of not disclosing the agent's name.

Furthermore, under Wisconsin's public records law, DOJ may consider the policies reflected in exceptions to disclosure under FOIA when determining whether to provide access to records. *See Linzmeyer*, 254 Wis. 2d 306, ¶ 32; *Democratic Party of Wis.*, 372 Wis. 2d 460, ¶¶ 13, 18. FOIA includes an express exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). FOIA also includes two other express exemptions for "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . or (F) could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552(b)(7). The Wisconsin Supreme Court has cited this statute in applying the balancing test analysis to Wisconsin law enforcement records. *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 32-33; *Democratic Party of Wis.*, 372 Wis. 2d 460, ¶¶ 13, 18. Release of the redacted information would harm the public interest sought to be protected by these FOIA exemptions. That consideration, in turn, was a factor in the determination that such information could not be released under Wisconsin's public records law.

For these reasons, the public interest in disclosure of this information is outweighed by the public interest in effective investigation and prosecution of criminal activity and the

protection of law enforcement officers and personnel and their families. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

Investigative reports provided confidentially to DOJ by ATF were redacted from case report ***20-7266/23***. ATF provided the reports to DOJ for its internal use only, on the condition that the reports remain the property of ATF and may not be redistributed outside DOJ without express authorization from ATF. ATF would not have provided these reports to DOJ without DOJ's acceptance of those conditions. ATF authorized DOJ to disclose the substantive information from the investigative reports that is included in the narrative portion of case report ***20-7266/23***. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, there is a public interest in honoring the conditions under which ATF provided the reports to DOJ and in cooperating with ATF so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the reports would preclude future report-sharing and significantly impair cooperative law enforcement efforts between DOJ and ATF. DOJ determined the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which ATF provided the investigative reports to DOJ, outweighs any public interest in disclosure by DCI of the ATF reports. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

National Crime Information Center (NCIC) records were redacted. These records are provided to law enforcement personnel only, require certification to access, and are confidential and prohibit secondary dissemination. In performing the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined there is a public interest in ensuring DOJ's access to NCIC records and in cooperating with other law enforcement agencies and organizations so as to encourage the current and future joint law enforcement efforts of DOJ and the other law enforcement agencies and organizations. Additionally, there is a public interest in maintaining the confidentiality of these records in order to preserve the effectiveness of the information and record sharing, which would be undermined by disclosure. To not honor the prohibition by disclosing the records would preclude future information and record sharing and significantly impair other cooperative law enforcement efforts between DOJ and other law enforcement agencies and organizations. DOJ determined the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which DOJ is provided access to the NCIC records, outweighs any public interest in disclosure of the records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Pursuant to the federal Driver's Privacy Protection Act (DPPA), which prohibits release of personal information and highly restricted personal information in response to a public records request, personal information, as defined in DPPA, contained within the DCI records that was obtained from the Wisconsin Department of Transportation (DOT) Division of Motor Vehicles (DMV) database was redacted. *See* 18 U.S.C. § 2721 et seq.; *New Richmond News v. City of New Richmond*, 2016 WI App 43, 881 N.W.2d 339.

A personal cell telephone Federal Communications Commission Identification number (FCC ID), which is economically valuable individually identifiable information, was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect against identity theft or other unauthorized use following any subsequent disclosure. In applying the balancing test, DOJ determined that the public interest in protecting this economically valuable individually identifiable information from misappropriation or misuse outweighs any public interest in disclosure.

Credit card numbers were redacted pursuant to Wis. Stat. § 19.36(13). To the extent this information is not directly governed by Wis. Stat. § 19.36(13), these numbers were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of financial identifying information and the protection of economically valuable information from misappropriation or misuse is expressed in Wis. Stat. § 19.36(13). DOJ determined that the same public interest in protecting financial identifying information from misappropriation or other misuse and in protecting the confidentiality and privacy of financial information applies here, and that the public interest in protecting this information, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure.

The serial number for a firearm was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. DOJ determined that the public interest in protecting the confidentiality and security of this property and its owner and in preventing misuse of this potentially valuable identification information upon any subsequent disclosure outweighs any public interest in disclosure of this information.

Crime Laboratory records, including photographs from the incident scene, were redacted pursuant to Wis. Stat. § 165.79(1). In accordance with Wis. Stat. § 165.79(1), information present within DCI case reports that discloses what analyses were performed by the Crime Laboratory and the results of those analyses also were redacted from the records prior to release.

Emergency medical services (EMS) personnel working with the City of Madison Fire Department responded to the incident scene to provide medical care for Mr. Johnson. Specific information regarding their assessment and treatment of Mr. Johnson, as observed or reported by the EMS personnel or other witnesses, including in the audio portion of video and dispatch recordings, was redacted from the records in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c). To the extent the information is not directly governed by Wis. Stat. §§ 256.15(12) and 146.82(5)(c), pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined the same underlying public policy of protecting the confidentiality and privacy of personal medical information, as well as the analogous restrictions on release of patient treatment information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of this information.

In addition, specific information regarding the treatment of Mr. Johnson by law enforcement, as reported by those providing the treatment, was redacted from the records pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. § 146.82. DOJ determined the same underlying public policy of protecting the confidentiality and privacy of personal health information, as well as the analogous restrictions on release of patient treatment information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of the redacted information.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the full names of individuals not related to this investigation were redacted to initials, and any personally identifiable information was redacted as well. Disclosing the names and other identifying and personal information of collaterally-mentioned individuals could have a chilling effect on the

willingness of individuals to cooperate in future investigations. *See also* Wis. Stat. § 19.35(1)(a) ("exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access"); Wis. Stat. § 19.85(1)(f) (providing for an exemption to consider, in part, "the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person . . . involved in such . . . investigations"). In performing the balancing test, DOJ determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law enforcement report outweighs any public interest in information about the conduct of governmental affairs. Furthermore, DOJ determined that the public interest in protecting the privacy of these individuals, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of this described information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 38.

An unsubstantiated reference to an individual mentioned in an interview was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. This speculation could have a substantial adverse effect on the reputation of the individual involved if made public. In applying the balancing test, DOJ determined that the public interest favoring protection of individuals from reputational damage caused by unconfirmed allegations outweighs any public interest in disclosure of this uncorroborated information. *See also* Wis. Stat. § 19.35(1)(a) ("exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access"); Wis. Stat. § 19.85(1)(f) (providing for an exemption to consider, in part, "the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person . . . involved in such . . . investigations").

DOJ is not releasing records under court seal. *See* Wis. Stat. § 19.35(1)(a) ("Except as otherwise provided by law"); Wis. Stat. § 19.36(1); *see also* Wis. Stat. § 801.21.

DOJ is not releasing data from law enforcement body cameras pursuant to Wis. Stat. § 165.87(3)(d). If desired, the body camera data may be requested directly from the Monona Police Department records custodian.

As documented in the DCI case file, squad video from the officers who responded to the critical incident scene, as well as state, municipal, and business surveillance video recordings were collected by DCI for review. Due to space constraints, the very large investigatory file, and the time necessary to review this material, duplicative video and video that does not depict scenes of investigatory interest are not included in this release. Furthermore, due to proprietary and time constraints, DOJ was unable to review or convert for viewing the Department of Corrections (DOC) building surveillance footage, documented in DCI report number ***20-7266/39***. DCI's review of all of related recordings is documented in individual reports within the DCI case file. Additional materials may be requested by specifying the report number. Such requests should be made through ordinary public records channels and will be processed accordingly.

Medical information was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. § 146.82 and the federal Health Insurance

Portability and Accountability Act (HIPAA). DOJ determined that the same underlying public policy of protecting the confidentiality and privacy of personal medical information outweighs any public interest in disclosure of this information. *See also John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 19 & n.4, 354 Wis. 2d 591, 849 N.W.2d 888 (observing that "[p]ersonal finance or health information" may be subject to redaction as "purely personal" in an email that otherwise is subject to disclosure).

DCI report number ***20-7266/14*** documents the autopsy of Elliot Johnson and preliminary autopsy results, provided by the Dane County Medical Examiner's Office. The DCI report has been included with the released records; however, the attached records, provided by the medical examiner's office, were wholly redacted from the release. Those records were provided to DOJ by the Dane County Medical Examiner's Office on the condition that the records would not be shared with any person outside the criminal investigation, and the medical examiner's office would not provide the records to DOJ without DOJ's agreement to those conditions. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, there is a public interest in honoring the conditions under which the medical examiner's records were provided to DOJ and in cooperating with the medical examiner's office so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Dane County Medical Examiner's Office. DOJ determined the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which the Dane County Medical Examiner's Office provided the records to DOJ, outweighs any public interest in disclosure by DOJ of the records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. An excerpt from the medical examiner's records, quoted within DCI report number ***20-7266/14*** was redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Dane County Medical Examiner's Office records custodian.

Photocopies of currency were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Federal law prohibits the counterfeiting of United States securities, the uttering of and dealing in counterfeit securities, and the fraudulent using of paper as money or to procure something of value. *See* 18 U.S.C. §§ 471, 472, 473, 491. These federal statutes evidence the strong public interest in preventing any illegal counterfeiting and fraudulent activity that may arise from the use of photocopies and photographs of currency. There is also a strong public interest in protecting economically valuable information from misappropriation or misuse, as evidenced by Wis. Stat. § 19.36(13). Disclosure of this information could also undermine or impair law enforcement's ability to prevent counterfeiting and fraudulent activities. Therefore, in applying the Wis. Stat. § 19.35(1)(a) balancing test, DOJ finds that the public interest in effective prevention of crime, and in protecting economically valuable information from misappropriation, misuse, or fraud, outweighs any public interest in disclosure of this information. *See* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41; *Democratic Party of Wis.*, 372 Wis. 2d 460, ¶¶ 13, 18, 21.

Only one copy of records for which duplicate copies exist has been included with the records prepared for release. *Stone v. Bd. of Regents*, 2007 WI App 223, ¶ 20, 305 Wis. 2d 679, 741 N.W.2d 774.

The law permits DOJ to impose fees for certain "actual, necessary and direct" costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying, and mailing the requested records if the total amount exceeds $5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees, and therefore the records are being made available online at this time without any payment required.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:ldm