



STATE OF WISCONSIN DEPARTMENT OF JUSTICE

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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 June 27, 2020 officer involved death of Rodney J. Freeman, has been prepared for release. The Dane County District Attorney determined there is no basis to prosecute the law enforcement officer involved, and DCI is releasing its case file pursuant to Wis. Stat. § 175.47(5)(b).

The DCI case in question is **20-5048 – Monona Car Accident**. That investigative case file has been reviewed in preparation for public release, and a copy of the case file reports has been made available online on the Wisconsin Department of Justice's website at www.doj.state.wi.us/dci/officer-involved-critical-incident. 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 in photographs and video of Mr. Freeman at the scene and during his subsequent autopsy.

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.

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. 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 balancing test regarding the release of investigative records. Pursuant to the Wis. Stat. § 19.35(1)(a) 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 names or other personally identifying information of these individuals where present within DCI case file records. The public interest favoring protection of the victims from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in the disclosure of this information.

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 officer-involved death 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:

- The name of a passenger in Mr. Freeman’s vehicle.
- The name of the registered owner of the vehicle Mr. Freeman was operating.
- Names of family members, adult witnesses, and others mentioned by individuals interviewed. (Initials for the names of these individuals were not redacted.) The last name of family members was left unredacted if it was the same as the deceased individual’s last name. The names of law enforcement officers and other public employees mentioned in the records were not redacted.
- Other information that would identify the above individuals including dates of birth; home addresses; home and personal cellular telephone numbers; descriptions, license plate numbers, and VIN numbers of vehicles, including in images; residential locations on maps; signatures; and driver’s license numbers.

- Audio recordings of witness interviews and witness calls to 911.
- Digital images of witnesses.
- The names and ages of involved juveniles were redacted in full.

The names of juveniles and their ages, which could identify the juveniles, were also redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Revealing the names and ages of the juveniles is not essential to understanding the requested records. In performing the balancing test, DOJ determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in the records, especially minor children and juveniles, outweighs any public interest in information about the conduct of governmental affairs. Additionally, well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. §§ 48.396 and 938.396. The same underlying public policy of protecting the confidentiality and privacy of children and juveniles outweighs any public interest in disclosure of the redacted information. *See* Wis. Stat. § 48.396 (“Law enforcement officers’ records of children . . . shall not be open to inspection or their contents disclosed” unless certain exceptions apply); Wis. Stat. § 938.396 (“Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed” unless certain exceptions apply).

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 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 this information.

Home addresses, home telephone numbers, and personal cellular telephone numbers 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; *Linzmeier*, 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.

Wisconsin Department of Transportation (DOT) files, accessed through the Wisconsin Department of Justice TIME System, which are provided to law enforcement personnel only and require training and certification to access, were redacted when contained in the investigative file in their original format, and where the information contained within those records is provided within the investigative report. The disclosure of such information by DOJ would significantly impair future information-sharing and other cooperative law enforcement efforts between DOJ and other government agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), DOJ concluded the public interest in ensuring law enforcement access to DOT records and in cooperating with other government and law enforcement agencies outweighs any public interest in disclosure of this information. *Cf. Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39; *see also* 18 U.S.C. § 2721 et seq.; *New Richmond News v. City of New Richmond*, 2016 WI App 43, 370 Wis. 2d 75, 881 N.W.2d 339.

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. 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.

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 that 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 June 27, 2020 incident and subsequent investigation was not redacted from the records.

Specific information that reveals the existence and/or location of residential security cameras employed by private citizens and the quantity and location of business security cameras was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Release of this information could compromise the safety and security of individuals and their residences and the businesses, the individuals who work there, and visitors to the businesses. DOJ determined that the public interest in protecting the security of these individuals and their residences and the security of the businesses and the people who work or visit there outweighs any public interest in this detailed information regarding the security systems. Information regarding the results of DCI's canvass for and review of related surveillance video is documented in the reports.

As documented in the DCI case file, squad video recordings and body camera recordings from the officers involved at the accident investigation scenes and the scene of the recovery 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. DCI's review of these 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.

Certain information involving confidential law enforcement investigative technology and techniques was redacted to preserve the effectiveness of that confidential technology and 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 public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), 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 technology and techniques effectively and gather information confidentially when conducting sensitive investigations outweighs any public interest in disclosure of this information. *See* Wis. Stat. § 19.31; *Linzmeier*, 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.

The name and path of a secure server that remains in use by Dane County, and the name of the DOJ secure Digital Forensics Unit server were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of this highly sensitive information would substantially increase the risk of an intrusion into these secure networks by unauthorized users. Such an intrusion could expose the work product of the county's employees, the Digital Forensics Unit, law enforcement agents, and others to the risk of loss, destruction, or manipulation. Additionally, the digital information stored in the computer systems and/or software programs include the personally identifying and private information of employees, investigative targets, crime victims, and other third parties. For these reasons, the disclosure of the redacted information could compromise the integrity of the entire county and DFU computer systems, the information electronically stored in it, and individuals' privacy information. The public interest in protecting the security of these server networks and computer systems—as well as county and state personnel and other individuals—and the integrity and confidentiality of the data stored therein, and in ensuring that government can operate safely and effectively without disruption and unnecessary interruption outweighs any public interest in disclosure of this information. *Cf. Linzmeier*, 254 Wis. 2d 306, ¶¶ 31, 38; *see also Democratic Party of Wis.*, 372 Wis. 2d 460, ¶¶ 13, 18–19, 21.

Personal cell telephone International Mobile Equipment Identity (IMEI) and Integrated Circuit Card Identifier (ICCID) numbers, which are economically valuable individually identifiable information, were 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.

The name and remote pilot license number for a DCI special agent, which could be used to obtain individually identifiable information about this agent, was redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), DOJ concluded that the public policy in favor of protecting the confidentiality of this individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of this information.

DCI report number **20-5048/6** documents DOJ's attendance at the autopsy of Mr. Freeman conducted by the Dane County Medical Examiner's Office. At the time of the release of the investigative file no final autopsy report was received from the medical examiner's office. If desired, records from the medical examiner's office may be requested directly from the Dane County Medical Examiner's Office records custodian.

As documented in DCI case file report **20-5048/50**, a forensic analysis report detailing the contents of a cell phone was collected by DCI for review. This report was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The forensic analysis report included thousands of files and documents containing sensitive and purely personal information. Most of the contents of the cell phone was not relevant to DCI's investigation. In performing the balancing test, the public interest in avoiding unnecessary intrusion into the personal lives of individuals and protecting the privacy of these individuals, as well as the public policies favoring the protection and respect for victims, the family members of victims, and the family members of the deceased, as explained above, outweigh any public interest in disclosure of the forensic analysis report detailing the cell phones' entire contents *See* Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010). Additionally, without a thorough review of the thousands of pages contained within the report, DOJ is unable to determine what information cannot be made public pursuant to statute, the common law, or the public records balancing test. Due to the time and resources necessary to review this material, this information is not included in this release. To review this material and apply any required redactions would require substantial staff time and resources and be overly burdensome. The public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530. DCI's review of these forensic analysis reports is documented in report **20-5048/50** within the DCI case file and information of investigatory value has been detailed in those DCI reports.

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,

A handwritten signature in blue ink that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw