March 11, 2016

To Whom This May Concern:

In response to public records requests received by the Wisconsin Department of Justice (DOJ), we prepared for release a copy of the Division of Criminal Investigation (DCI) case file for DCI’s investigation into the March 14, 2015 Officer Involved Shooting in Kenosha, Wisconsin, which resulted in the death of Aaron M. Siler.

The DCI case in question is 15-1331 OID – Kenosha PD – 2103 56th Street. We reviewed the investigative case file in preparation for public release, and we have made a copy of the file 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 Department of Justice Communications Director Anne Schwartz at schwartzaw@doj.state.wi.us.

We redacted certain information from the records, either because specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These redactions are described below. In addition, I have been mindful in preparing these records for release that the purpose of the Wisconsin public records law is to shed light on the workings of government and the acts of public officers and employees in their official capacities. Building and Constr. Trades Council v. Waukesha Comm. Sch. Dist., 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law is not intended to provide the public with access to information that otherwise would be private or to provide a mechanism to satisfy public curiosity about matters that do not involve the operation of government.

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, I applied the Wis. Stat. § 19.35(1)(a) public records balancing test and determined that the public interest in treating surviving loved ones of the deceased with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following information:

- Graphic photographs and video recordings taken in the vicinity of the shooting incident that resulted in the death of Aaron Siler, which occurred at 2103 56th Street, Kenosha, Wisconsin, and graphic descriptions and details regarding the shooting scene and the deceased at the scene.

- Graphic photographs taken of Aaron Siler during his autopsy.
In applying the balancing test, I found that the public interest in the privacy of Mr. Siler’s surviving loved ones outweighs any public interest in disclosure of these images, and therefore, certain graphic portions of photographic records have been redacted prior to the release of this investigative file. Video taken of the scene by law enforcement and the Wisconsin State Crime Laboratory has been redacted in its entirety as it duplicates the photographs taken by those entities.

In addition, a few other types of records and information pertaining to surviving family members have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test:

- The full first and last names of Aaron Siler’s parents and immediate family members have been redacted to protect their privacy, along with their home addresses and telephone numbers. Additionally, the name of Mr. Siler’s girlfriend has been partially redacted — leaving first initials only — to protect her privacy, and the name of Mr. Siler’s child has been redacted in full, as have the names of other juvenile family members. I concluded that the public interest favoring protection of surviving family members from unnecessary public attention, possible harassment and unnecessary emotional upset outweighs any public interest in disclosure of this information.

- Driver’s license numbers for Mr. Siler and other Siler family members have been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. I concluded that Mr. Siler’s surviving family members’ interest in protecting the confidentiality of this economically valuable individually identifiable information outweighs any public interest in disclosure of these driver’s license numbers.

- The driver’s license number of the woman whose car was damaged by Mr. Siler, as well as the license plate number and vehicle identification number for that vehicle, have been redacted to protect the privacy of this victim and her family. 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 DOJ’s policy to protect 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. I concluded the public interest favoring protection of the victim from unnecessary public attention, possible harassment and unnecessary emotional upset outweighs any public interest in the disclosure of this information.

- The name of a domestic violence victim has been redacted from a criminal complaint included in the DCI case file in order to protect his or her privacy. 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 protect 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. I concluded the public interest favoring protection of the victim from unnecessary public attention, possible harassment and unnecessary emotional upset outweighs any public interest in the disclosure of this information.

In preparing these records for release, I also determined by application of the public records balancing test that 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 legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals referenced by witnesses. Cf. Wis. Stat. § 19.31; Linzmeyer v. Forcey, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811. Due to the sensitive and sometimes controversial nature of officer-involved shooting 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 has been redacted from the records prepared for release:

- The names of witnesses interviewed during this investigation, and the names of family members, witnesses and other individuals mentioned by others. (First initials of first and last names were not redacted.)

- Other information that would identify these individuals, such as dates of birth, driver's license numbers, addresses and telephone numbers, apartment numbers, places and/or hours of employment, work titles and detailed vehicle information.

- Audio and/or video recordings of family member/witness interviews, which reveal the voices or physical images of the witnesses and could be used as a means of identifying specific individuals.

- Audio recordings of unrelated police dispatch communications that could identify witnesses, victims or other confidential information, including names and addresses, regarding unrelated incidents, which occurred contemporaneously.

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

Birthdates of individual persons have been 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), I concluded that the public policy in favor of protecting the
confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of the dates of birth of individual persons.

Home addresses and personal telephone numbers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that 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 in encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 31-32.

I redacted the birthdates of law enforcement officers and other public employees pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in preventing identity theft or other misuse of this economically valuable information outweighs any public interest in its disclosure.

Direct telephone numbers assigned to specific law enforcement officers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these numbers are not made public and must remain confidential. In applying the public records balancing test to these phone numbers, I concluded that the strong public interest in effective investigation and prosecution of criminal activity outweigh any public interest in disclosure of these direct telephone numbers of law enforcement officers. Allowing the direct telephone numbers of 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 have not been redacted from the records.

Crime Lab records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2). In accordance with that statute, details of Crime Lab records also have been redacted where present in DCI case reports. In addition to the Crime Lab records and details, I redacted information that would disclose what evidence was submitted to the Crime Lab, analyses performed by the Crime Lab and the results of those analyses.

A “Notes List Report” provided confidentially to DOJ by the Wisconsin Department of Corrections, Probation and Parole has been wholly redacted where attached to case report 15-1331/65. This report is the property of the Department of Corrections (DOC) and was provided to DOJ for its internal use only, with the condition that it is not to be disclosed by DOJ. DOC would not have provided this report to DOJ without DOJ’s acceptance of this condition. Therefore, in performing the Wis. Stat. § 19.35(1)(a) balancing test, I determined there is a public interest in honoring the conditions under which DOC provided the report to DOJ and in cooperating with DOC so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the report would preclude future report-sharing and significantly impair cooperative law enforcement efforts between DOJ and DOC. I concluded that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under
which DOC provided the report to DOJ, outweighs any public interest in disclosure by DCI of the DOC report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

I redacted serial numbers of weapons assigned to Kenosha Police Department law enforcement personnel. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined that 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 details of equipment and techniques used, outweighs any public interest in disclosure. *Cf. Wis. Stat.* § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

I redacted certain information involving confidential law enforcement investigative techniques and use of technology to preserve the effectiveness of those confidential techniques and technology, which would be undermined by disclosure. Applying the public records balancing test, I determined that the public interest in protecting the ability of law enforcement to gather information confidentially when conducting sensitive investigations and in protecting the privacy of citizens involved in those investigations outweighs any public interest in disclosure. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Additionally, I redacted content within reports that reveals specific routine shifts worked by law enforcement officers pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the officers, their families and their homes. In performing the balancing test, I determined that revealing specific routine hours worked by law enforcement personnel created a real and likely threat to officers, their families and their homes. I concluded that the public interest in protecting law enforcement personnel, their families and the security of their homes outweighs any public interest in information regarding their routine shifts.

Pursuant to the § 19.35(1)(a) balancing test, I redacted interior views of surveillance video provided to DCI by a private residential apartment building located near the shooting location. I determined that the public interest in not identifying residents of a private apartment building and their daily routines outweighed the public interest in disclosing such information. In making this determination, I concluded the risk of disclosing the locations of surveillance cameras and compromising the security of individuals within their private residential buildings outweighs any public benefit resulting from the disclosure of such information.

DCI report numbers 15-1331/80, 15-1331/97, and 15-1331/108, document DCI’s receipt of the body diagram, autopsy, and toxicology records for Mr. Siler, provided by the Milwaukee County Medical Examiner’s office. The DCI reports have been included with the released records; however, the attached records, provided by the medical examiner’s office, have been wholly redacted from the release. Those records were provided to DOJ by the Milwaukee County Medical Examiner’s Office on the condition that the reports would not be shared with any person outside the criminal investigation. The medical examiner’s office would not provide the reports to DOJ without DOJ’s agreement to those conditions. Therefore, in performing the Wis. Stat. § 19.35(1)(a) balancing test, I determined there is a public interest in honoring the conditions under which the medical examiner’s office provided the records 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 report-sharing and significantly impair cooperative law enforcement
efforts between DOJ and the medical examiner’s office. I concluded that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which the medical examiner’s office provided the report to DOJ, outweighs any public interest in disclosure by DCI of the medical examiner’s records. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, the medical examiner’s records may be requested directly from the Milwaukee County Medical Examiner’s Office records custodian.

Finally, 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 N.W.2d 679, 741 N.W.2d 774.

DOJ normally charges $0.15 per page for copies, $0.14 per page for electronic copies and $1.00 per disc for duplication of records provided in response to public records requests. DOJ may also impose a fee for locating a record if the cost is $50.00 or more. Wis. Stat. § 19.35(3)(e). Under Wis. Stat. § 19.35(3)(f), DOJ is authorized to require prepayment by a requester of records of any fee or fees imposed if the total amount exceeds $5.00. However, 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,

[Signature]

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw