



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/266-2779

September 18, 2015

To Whom This May Concern:

In response to public records requests received by the Wisconsin Department of Justice (DOJ), a copy of the Division of Criminal Investigation (DCI) investigative case file for DCI's investigation into the July 22, 2015 shooting by Green County Sheriff's Department Deputies Cody Kanable and John Schuetz, which resulted in the death of Francisco Benitez Santiago, has been prepared for release.

The DCI case in question is **15-4002: Green County OID – Francisco Benitez Santiago**. 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. For information regarding access to copies of related photographs, audio recordings and video recordings, please contact Department of Justice Communications Director Anne Schwartz at schwartzaw@doj.state.wi.us.

Certain information has been redacted 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. Waunakee 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 of Francisco Benitez Santiago at the scene, at the Monroe Clinic following transport to that facility for treatment and during his subsequent autopsy.
- Graphic images taken at the scene of the shooting at 1007 12th Street in Monroe, WI.

In applying the balancing test, I found that the public interest in the privacy of Mr. Benitez Santiago's surviving loved ones outweighs any public interest in disclosure of these images, and therefore, graphic video and photographic records have been redacted prior to release of this investigative file.

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:

- Names of adult witnesses, family members and others mentioned by individuals interviewed.
First initials for the names of these individuals have been left unredacted. The names of law enforcement officers and other public employees mentioned in the records are not redacted. The names of Mr. Benitez Santiago and two other men who were involved in an incident that occurred immediately prior to the officer involved shooting—Samuel Primero Nunez and Elias Perez-Barrios—have been included in media accounts and are not redacted from DCI records.
- Full names of juveniles interviewed or mentioned by witnesses.
Revealing the names of the children who were interviewed as witnesses is not essential to understanding the information they provided, and other children simply mentioned in the investigative reports were of no relevance to DCI's investigation.
- Other information that would identify the above individuals.
Dates of birth, home addresses, home and personal cell telephone numbers and signatures for these individuals have been redacted, along with information regarding routine work hours and regarding the model of car driven by one of the individuals who called 911.
- Audio recordings of witness interviews and witness calls to 911.
- Digital images of witnesses, including juveniles.

In performing the balancing test, I determined that the public policy interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law enforcement report outweighs any legitimate public interest in information about the conduct of governmental affairs. Furthermore, I determined that the public interests 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 have been made from the records prior to public release, for the reasons explained below.

Birthdates and driver's license numbers 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 or driver's license numbers of individual persons. In one of the photographs related to report *15-4002/4*, Mr. Benitez Santiago's date of birth is visible on a form. Therefore, this image has been converted to a PDF document, with the date of birth redacted, and that record has been included following report *15-4002/4* in the master report copy. The other photographs related to that report are being provided in their original JPEG format, except those redacted altogether for reasons set forth elsewhere in this letter.

Photographs of driver's licenses have been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205.

In six of the photographs related to report *15-4002/5*, Mr. Benitez Santiago's Mexican identification cards are visible. Two of these images are close-ups, and have been redacted entirely to protect against identity theft or other unauthorized use following any subsequent disclosure. The other four images were converted to PDF records so that the portions of these photographs that contain the identification cards could be redacted for the same reason. The PDF records of these four images have been included following report *15-4002/5* in the master report copy; other photographs related to that report are being provided in their original JPEG format, except those redacted altogether for reasons set forth elsewhere in this letter. 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 photographs of Mr. Benitez Santiago's Mexican identification cards.

Birthdates of law enforcement officers and other public employees have been redacted pursuant to Wis. Stat. § 19.36(10)(a). In one of the photographs related to report *15-4002/37*, the officer's date of birth is visible on a legal pad in the background of the photograph. Therefore, this image has been converted to a PDF document, with the date of birth redacted, and that PDF image has been included following report *15-4002/37* in the master report copy. The remaining photographs related to that report did not require any redaction, and are being provided in their original JPEG format.

Home addresses, home telephone numbers and personal cell 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. Two exceptions were made. First, the addresses of the scenes where the officer-involved shooting and earlier related shooting incidents occurred have not been redacted because those addresses have been widely publicized, and pursuant to the balancing test I determined that public interest in disclosure of those addresses outweighs the privacy interests of the landlord and

tenants of those properties. Secondly, where investigators conducted interviews of neighbors in the area of the shooting, only the street numbers and/or apartment numbers of those addresses have been redacted because the reports make clear this was a neighborhood canvass of addresses in the vicinity.

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.

Home e-mail addresses of individuals 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 expectation of privacy on the part of individuals in their personal contact information and by the public interest 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, ¶¶ 30-32.

Crime Lab records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2), with the exception of Crime Lab records documenting Crime Scene Response Team (CSRT) activity at the scene, which are exempt from the statutory restrictions governing release of Crime Lab analysis documentation. In accordance with Wis. Stat. § 165.79(1) and (2), information present within DCI case reports that discloses what analyses were performed by the Crime Lab and the results of those analyses also has been redacted from the records prior to release.

As documented in DCI case report **15-4002/63**, the Crime Lab's Crime Scene Response Team produced both photographic and video records of the scene. At this time, the photographs have been prepared for release with redactions made as set forth elsewhere in this letter. The video recording, which is essentially duplicative of the content in the photographs will require additional time to prepare in redacted format for release, but it can be prepared for release if requested. Only a very brief portion at the very beginning of the video recording includes audio, and that audio recording has been included along with the photographs prepared for release at this time in connection with **15-4002/63**.

Green County Emergency Medical Services (EMS) personnel responded to the shooting scene to provide medical care for Mr. Benitez Santiago. Excerpts from DCI records that document patient assessment and treatment information provided by EMS personnel have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c). It should be noted that these redactions also pertain to the activities of Deputy Fire Chief Lane Heins, as well as the listed EMS personnel, because the deputy chief was acting in his capacity as an EMS responder during a portion of his time at the scene.

Details regarding how weapons assigned to law enforcement personnel are routinely secured have been redacted to preserve the security and effectiveness of the law enforcement officers. 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 their equipment and techniques, outweighs any public interest in disclosure. Cf. Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Specific information identifying routine shifts worked by law enforcement officers has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the officers' families. In performing the balancing test, I determined that the public interest in protecting the security of the homes and families of these public employees outweigh any public interest in information regarding their routine shifts. Details regarding the specific shifts worked by the officers involved in the July 22, 2015 shooting incident have not been redacted from the records.

DCI case report **15-4002/7** documents the receipt of four audio recordings, listed as property items 7.1, 7.2, 7.3 and 7.4. As noted in this report, items 7.1, 7.2 and 7.4 are all copies of Green County "911 Console" recordings for the time period from 19:13:01-19:46:54, both with and without "Time Announcements"; item 7.3 is a copy of a recording of Green County Sheriff's Office "Frequency 1" for 19:18:00-23:55:04 "w/Time Announcements". Review by DCI of these four audio recordings is documented under DCI case report **15-4002/36**, along with the review of two additional copies of Green County "Sheriff Frequency 1" for 19:18:00-23:55:04, which are listed as property items 36.1 and 36.2.

DCI case report **15-4002/33** documents the receipt of two squad video recordings for Deputy Cody Kanable. One of these two recordings, which covers his involvement in the events resulting in the officer-involved shooting, requires no redaction. The other recording covers a traffic stop made earlier in the day by Deputy Kanable. Information regarding prescription medications used by the individual involved in that traffic stop has been redacted from the audio portion of the recording 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, 51.30, and the federal HIPAA laws. Although those privacy laws do not directly govern the redacted health information, I concluded that the public interest in the same underlying public policy of protecting the confidentiality and privacy of personal health information outweighs any public interest in disclosure of this information.

As documented in report **15-4002/36**, the reviewing DCI agent determined that the recordings listed as property items 7.1, 7.2 and 7.4, containing Green County "911 Console" audio recordings, are identical except that item 7.4 includes the addition of a time announcement voiceover. Case report **15-4002/36** includes a verbatim transcript of these three duplicative audio recordings, along with notes by the agent regarding relevant times from the copy with time announcements. These audio recordings include the voices of the three witnesses who called 911, which are not being released with DCI records for the reasons set forth above. Therefore, considering that a complete transcript of these duplicative audio recordings is being provided, and that a majority of the audio content would require redaction of these witnesses' voices, along with other minimal redactions as reflected in the transcript copy, we have not prepared a redacted copy of this Green County "911 console" audio recording for release at this time.

The DCI agent also documented, within report *15-4002/36*, her review of the recordings listed as property items 7.3, 36.1 and 36.2, containing the Green County Sheriff's Office "Frequency 1" radio traffic. As the agent notes in her report, these three recordings are identical except that there is a difference of three (3) minutes between the recordings listed as items 36.1 and 36.2, and the item listed as 7.3 includes the addition of a time announcement voiceover. The reviewing agent did not prepare a transcript of the "Frequency 1" recording. Because the three audio recordings are duplicative, a single copy of this audio recording has been prepared for release, using the full-length audio without time announcements, listed as 36.1. The only redactions made from this audio recording are the home addresses of individuals mentioned in connection with radio conversations regarding law enforcement activity unrelated to DCI's investigation of the officer-involved shooting incident, and one reference to a medical emergency for one of these individuals. These redactions were made in the interests of citizen privacy pursuant to the public records balancing test, for the reasons set forth above.

DCI case report *15-4002/42* documents the receipt of the body camera video recordings for an officer who responded to the scene following the officer-involved shooting incident. This video recording captures Mr. Benitez Santiago's body at the scene, EMS responder treatment and the faces and voices of various witnesses at the scene, including juveniles. Therefore, we must complete statutorily mandated redactions and balancing test redactions made in consideration of the privacy of the family of the deceased and witnesses as discussed in this letter previously. Accordingly, DOJ is in the process of preparing a redacted copy of this video recording, and it will be made available separately as soon as that work is complete.

DCI case report *15-4002/53* documents the receipt and subsequent review by DCI agents of two audio recordings provided to DCI by the Monroe Police Department. The first of these, listed as 53.1, contains the Monroe Police audio of one of the three 911 calls received by Green County, which was also relayed to Monroe Police and captured by their audio system. The full content of the 911 call contained on recording 53.1 duplicates a portion of the content of the Green County "911 Console" recording documented under report *15-4002/36*, and is included in the complete transcript within that report. Again, because a complete transcript of this recording is included with the records being released, and because the audio content which includes the 911 caller's voice would require redaction prior to release of audio recording 53.1, we have not prepared a redacted copy of this audio recording for release at this time.

The second audio recording documented under DCI case report *15-4002/53*, listed as 53.2, contains radio dispatch communications provided by the Monroe Police Department covering the time period surrounding the shooting incident on July 22, 2015. This recording is approximately 12 hours long, and the reviewing agent prepared a transcript of the first fifty minutes, which covers the events surrounding the officer-involved shooting incident. That transcript is included within report *15-4002/53*, with minimal redactions made for reasons as set forth elsewhere in this letter. DOJ is in the process of preparing a redacted copy of the full 12-hour audio recording for item 53.2, which will be made available separately as soon as it is ready.

DCI case report *15-4002/56* documents receipt and review of audio recordings from the Green County Sheriff's Office for "Frequency 2" for the time period from 19:34:00-19:43:44. These recordings are listed as items 56.1 and 56.2, and the reviewing DCI agent notes in her report that these recordings are identical except that one includes time announcement voiceover. The agent prepared a transcript of this audio record, which is included within report *15-4002/56*. Again, because the two audio recordings are duplicative, a single copy of this audio recording was prepared for release, using the version without time announcements, listed as 56.1. No redactions were made from this audio recording.

A firearms trace report provided confidentially to DOJ by the federal Bureau of Alcohol, Tobacco, and Firearms (“ATF”) has been redacted from case report **15-4002/49**. ATF provides firearms trace reports to DOJ for its internal use only, on the condition that firearms trace reports remain the property of ATF and may not be redistributed outside DOJ without express authorization from ATF. ATF would not have provided this report to DOJ without DOJ’s acceptance of those conditions. ATF authorized DOJ to disclose the substantive information from the firearms trace report that is included in the narrative portion of case report **15-4002/49**. 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 ATF provided the report 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 report would preclude future report-sharing and significantly impair cooperative law enforcement efforts between DOJ and ATF. I concluded that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which ATF provided the firearm trace report to DOJ, outweighs any public interest in disclosure by DCI of the ATF firearms trace report itself. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

A receipt for medical treatment, worker’s compensation release of medical records authorization form and worker’s compensation first notification of injury form attached to report **15-4002/50** have not been provided pursuant to Wis. Stat. § 146.82(5)(c). *See also* Wis. Stat. § 102.33(2)(b). In addition, notwithstanding Wis. Stat. § 146.82 and § 102.33, I am not disclosing the receipt for medical treatment, worker’s compensation release of medical records authorization form and worker’s compensation first notification of injury form 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. Even if Wis. Stat. § 146.82 does not directly govern the medical information included in these records, I find that the same underlying public interest in protecting the confidentiality and privacy of personal medical information outweighs any public interest in disclosure of this information.

An association chart referenced in related **Task 15-1774** has been redacted from the records prepared for release because it is connected with an ongoing criminal investigation. In performing the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the public interest in effective investigation of crime outweighs any public interest in disclosure of the redacted association chart. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 26, 30, 32, 39.

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)(c). 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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:kas