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To Whom This May Concern:

On September 18, 2015, in response to public records requests received by the Department of Justice (DOJ) regarding the July 22, 2015 shooting by Green County Sheriff's Department Deputies Cody Kanable and John Schuetz that resulted in the death of Francisco Benitez Santiago, a copy of the related Division of Criminal Investigation (DCI) investigative case file, **15-4002: Green County OID – Francisco Benitez Santiago**, as of that date, was made available on DOJ's website at www.doj.state.wi.us/dci/officer-involved-critical-incident. Numerous photographs, audio recordings and video recordings related to the investigation were also made available at that time.

The cover letter describing the redactions made from those DCI records also explained that review and completion of required redactions remained underway for two digital records related to this investigation: a video recording referenced in DCI report number **15-4002/42** and an audio recording referenced in report number **15-4002/53**. Copies of those additional digital records are now available upon request to DOJ Director of Communications and Public Affairs Anne Schwartz at schwartzaw@doj.state.wi.us.

In addition, a small number of new reports were added to the DCI case file following that prior records release, before the file was formally closed. Those additional reports were also prepared for public release, and this supplemental record is available at the DOJ website address shown above.

Certain information has been redacted from the additional digital records and reports being made available in this supplemental release, 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 outweighs any legitimate public interest in disclosure of graphic images showing Francisco Benitez Santiago at the scene. 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 images included in the **15-4002/42** video have been redacted prior to release of that video record.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test and in view of the strong public policies protecting the confidentiality of personal medical history information and the privacy rights of a deceased person's surviving loved ones, I have determined to release only portions of the pathologist's autopsy report for Mr. Benitez Santiago. A summary of the autopsy produced by the pathologist is included within the related DCI report narrative, and a copy of the initial portion of the autopsy report itself is also included in the records prepared for release to you. The remainder of Mr. Benitez Santiago's autopsy report was not significant in DCI's investigation of this matter. In considering whether to release this remaining portion of the autopsy report, I weighed the existence of any reasonable public interest in disclosure of this information against the privacy rights of Mr. Benitez Santiago's surviving family members. *Cf. Favish*, 541 U.S. at 168, 171-72 (applying federal Freedom of Information Act to release of death scene photos, reasoning that invasion of family privacy is unwarranted where no significant public interest, "more specific than having the information for its own sake," would be advanced, or would likely be advanced by the release). Under these circumstances I determined that the public interest in confidentiality of Mr. Benitez Santiago's private medical information and privacy of his surviving loved ones outweighs any public interest in disclosure of the full report.

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 witnesses, family members and others mentioned by individuals interviewed. First initials for the names of these individuals have been left unredacted.
- Audio recordings of witnesses and digital images of witnesses, including juveniles captured by the officer's body camera video documented in DCI report number *15-4002/42*.

In performing the balancing test, I determined that the public policy interest in avoiding unnecessary intrusion into the personal lives of persons 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 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.

As noted in my September 18, 2015 letter, which accompanied the initial release of records related to this investigation, 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. Audio recording 53.1 was addressed in that letter and made available at that time; however, audio recording 53.2 was still in the process of being prepared for release, as my letter explained. Audio recording 53.2, which is approximately 12 hours long, contains radio dispatch communications provided by the Monroe Police Department covering the time period surrounding the shooting incident on July 22, 2015. The DCI agent

who reviewed this record included a transcript of the first 50 minutes within report *15-4002/53*, which was included with the initial records release. At this time, the full 12-hour audio recording is also available for release. As noted by the reviewing agent in report *15-4002/53*, it appears this audio recording captures real-time audio activity, as there are significant gaps of silence between the recorded radio transmissions. We made only the following minimal redactions from this audio recording prior to release:

- References to the vehicle of a citizen who called 911 have been redacted. 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, for the same reasons already set forth above. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 38.
- Full names of individuals mentioned by the dispatcher in connection with calls for assistance unrelated to the officer-involved shooting incident and related law enforcement activity, such as calls seeking emergency medical assistance and reporting accidents, along with specific details regarding those unrelated events, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Again, in performing the balancing test, I determined that the public 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 interest in protecting the privacy of these individuals also outweighs any public interest in disclosure of this described information.
- Home addresses—except where they are used only to identify a location, rather than being associated with a specific witness—also have been redacted pursuant to the 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. As noted at the time of the earlier record release, an exception was made for addresses at the scene where the officer-involved shooting occurred. These addresses have not been redacted because they have been widely publicized, and pursuant to the balancing test, I determined that the public interest in disclosure of those addresses outweighs the privacy interests of the landlord and tenants of those properties.
- 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 numbers for law enforcement. 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.

In addition to the overall redactions set forth thus far, certain other specific types of redactions have been made from these supplemental 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.

Crime Lab records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2). 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 has also been redacted from the records prior to release.

Green County Emergency Medical Services (EMS) personnel responded to the shooting scene to provide medical care for Mr. Benitez Santiago. Audio and video excerpts from the *15-4002/42* video 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).

DOJ normally charges \$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 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,



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Office of Open Government

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