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To Whom This May Concern:

In response to public records requests received by the Wisconsin Department of Justice (DOJ), we have prepared for release a copy of the DOJ Division of Criminal Investigation (DCI) investigative case file for DCI's investigation into the September 9, 2015 shooting in Ashwaubenon, which resulted in the death of Dustin M. Kuik.

The DCI case number is *15-5086 Ashwaubenon OID – Dustin M. Kuik*. 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 Department of Justice Communications Director Anne Schwartz at schwartzaw@doj.state.wi.us.

Certain information has been redacted from the investigative file records as prepared for 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 policies requiring that surviving loved ones of the deceased be treated with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of graphic information, including:

- Graphic photographs and video recordings taken in the vicinity of the shooting incident that resulted in the death of Dustin M. Kuik, which occurred at 1978 Holmgren Way in

Ashwaubenon, Wisconsin, and graphic descriptions and details regarding that shooting scene and regarding the deceased at the scene.

- Graphic photographs taken of Dustin M. Kuik at the hospital and during the autopsy.
- Dustin Kuik's medications.
- Scene video that depicts Dustin Kuik's girlfriend and two juvenile children.

In applying the balancing test, I found that the privacy interests of Dustin Kuik's girlfriend and juvenile children, who were in the vehicle at the time of the incident, and the Kuik family outweighs any public interest in disclosure of this graphic information, and therefore, certain portions of video and photographs have been redacted prior to the release of this investigative file.

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 name of Mr. Kuik's girlfriend – leaving first initials only – and the full names of the girlfriend's children have been redacted to protect their privacy. Additionally, a videotaped interview and audio recorded telephone calls to Mr. Kuik's girlfriend have been redacted in their entirety. I concluded that the public interest in protecting surviving loved ones from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in disclosure of this information. The interview and calls are summarized in the associated DCI reports.
- The first names of Mr. Kuik's surviving family members have been redacted, leaving first initials only, and those with a different last name than Mr. Kuik have had their last names redacted to the first initial as well. I concluded that the public interest favoring protection of surviving loved ones from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in disclosure of this information.
- References to the employment of Mr. Kuik's girlfriend have been redacted. I concluded that the public interest favoring protection of surviving loved ones and their place of employment from unnecessary public attention, possible harassment and unnecessary emotional upset outweighs any public interest in the disclosure of this information.
- I redacted Dustin Kuik's credit card number from within photos and reports pursuant to Wis. Stat. § 19.36(13).
- Driver's license numbers for Mr. Kuik and his girlfriend, their Social Security numbers, and their health insurance identification numbers have been redacted to

protect against identity theft or other unauthorized use following any subsequent disclosure. I concluded that Mr. Kuik's surviving family members' interest in protecting the confidentiality of this economically valuable individually identifiable information outweighs any public interest in disclosure of this information.

- The driver's license number of the owner of the car driven by Mr. Kuik has been redacted to protect the privacy of this victim and his 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 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; *Linzmeier 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 of 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 or present at the location during the incident, redacted to the first initial of their first and last names.
- Other information that would identify these individuals, such as dates of birth, addresses and telephone numbers, signatures, places of employment, and hotel account numbers.

- Portions of audio recordings of unrelated police dispatch communications that could identify subjects or other confidential information, including names, addresses, birthdates, and telephone numbers, 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, personal telephone numbers, and personal email addresses 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 lives and by the public interests 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. One exception was made. The address where the shooting occurred, 1978 Holmgren Way in Ashwaubenon, has not been redacted because that address has been widely publicized, and pursuant to the balancing test, I determined the public interest in disclosure of that address outweighs the public interest in the privacy of the hotel at that address.

I redacted the home addresses and home telephone numbers of law enforcement officers pursuant to Wis. Stat. § 19.36(10)(a). Additionally, I redacted the birthdates of law enforcement officers 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 and cell phone 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 outweighs any public interest in disclosure of these telephone numbers of law enforcement officers. Allowing these telephone numbers of these law enforcement officers to become publicly known would have an adverse effect on the officers' future ability to investigate criminal activity because these 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.

Additionally, I redacted content within the reports that reveals specific routine hours and days worked by law enforcement personnel in the interest of protecting the safety of officers and their families. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded that revealing specific routine days and hours worked by law enforcement personnel created a real and likely threat to officers, their families, and their homes. The public interest in protecting law enforcement personnel, their families, and their homes and not endangering their safety outweighs the public interest in the disclosure of specific routine hours worked.

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, and the results of analyses conducted for the Wisconsin State Crime Lab by outside independent laboratories.

Emergency medical personnel from Ashwaubenon Public Safety Paramedic Unit responded to the shooting scene to provide medical care for Dustin Kuik. Information provided to DCI by these emergency medical personnel has been redacted where present in DCI case reports pursuant to Wis. Stat. §§ 256.15(12) and 146.82(5)(c), except for information authorized for release by Wis. Stat. § 256.15(12)(b).

DCI report number *15-5086/17* documents DOJ's receipt of the preliminary autopsy findings for Dustin Kuik, provided by the Fond du Lac 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. DCI report number *15-5086/47* documents DOJ's receipt of the final autopsy and toxicological reports for Dustin Kuik, provided by the Brown 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. These records were provided to DOJ by the Fond du Lac and Brown County Medical Examiner's Offices on the condition that the reports would not be shared with any person outside the criminal investigation, and the medical examiner's offices would not provide the reports to DOJ without DOJ's acceptance to those conditions. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined there is a public interest in honoring the conditions under which the medical examiners' records were provided to DOJ and in cooperating with the medical examiner's offices 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 medical examiner's offices. 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 offices 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. If desired, the medical examiners' records may be requested directly from the records custodians of the offices of the Fond du Lac and Brown County Medical Examiners.

DCI report number *15-5086/27* documents DCI's receipt and review of Ashwaubenon Public Safety dispatch/radio calls and radio traffic. Audio records for these materials were provided to DCI, and DCI's review of the audio records is documented in this report. The DCI agent has included a transcript of the content of these audio recordings in the related DCI report, and that report and related transcript is included in the public release, with minimal redactions made as described elsewhere in this letter. Considering that the relevant information from the audio format records was included by DCI agents in their related case report, which can be reviewed and redacted as necessary for public release much more quickly than audio records, the audio records have not been prepared for public release at this time. Those audio files were captured and provided to DCI in a format that would make conversion and redaction prohibitively time-consuming. If you wish to request copies of the related audio records for this report, please contact me.

DCI report numbers *15-5086/20* and *15-5086/35* contain medical records obtained by law enforcement from St. Vincent Hospital and the Manitowoc County Jail. Medical records are not being provided pursuant to Wis. Stat. § 146.82. Additionally, notwithstanding Wis. Stat. § 146.82, I am not disclosing medical information obtained through a review of medical records and those medical records themselves 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.

Interagency Administrative Message records have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I concluded there is a public interest in maintaining the confidentiality of these law enforcement investigative techniques, use of technology and the results to preserve the effectiveness of those confidential techniques and technology, which would be undermined by disclosure. Applying the public records balancing test, I determined 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.

Finally, it should be noted that only one copy of records for which duplicate copies exist has been included in the records prepared for public 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,



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Assistant Attorney General
Office of Open Government

PMF:hpw