



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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To Whom This May Concern:

The enclosed records have been prepared in response to numerous public records requests received by the Wisconsin Department of Justice (DOJ) for copies of records related to the investigation conducted by DOJ Division of Criminal Investigation (DCI) into the October 24, 2015 shooting in Paddock Lake, which resulted in the death of Darren M. Fude.

The DCI case number is **15-5925 OID - 2107 236th Ave, Paddock Lake WI KCSO**. That case file has been reviewed in preparation for public release, and a copy of the file has been made available on DOJ's website at www.doj.state.wi.us/dci/officer-involved-critical-incident.

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).

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 taken of Darren M. Fude at the hospital and during the autopsy;
- Police Squad dash cam video that depicts Mr. Fude being removed from the scene by paramedics;

- Scene photos and video of the Fude residence that depict the interior of the private home.

In applying the balancing test, I found that the public interest in the privacy of Darren Fude's wife and children, who were in the residence at the time of the incident, outweighs any public interest in disclosure of this graphic information, and therefore, certain portions of video and photographs have been redacted.

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. Fude's wife – leaving first initials only – and the full names of Mr. Fude's juvenile children have been redacted to protect their privacy. Additionally, an audiotaped interview with Mr. Fude's wife has been redacted in its entirety. The interview is summarized in the associated DCI report; however, 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.
- The first names of Mr. Fude's other surviving family members have been redacted, leaving first initials only. 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.
- I redacted Mr. Fude's bank account information from within photos pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. *See also* Wis. Stat. § 19.36(13). I determined that the public interest in protecting the confidentiality of this economically valuable individually identifiable information outweighs any public interest in disclosure of this individual account number.
- The driver's license number for Mr. Fude has been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. I concluded that Mr. Fude'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.
- I redacted Darren Fude's medications/prescriptions because I determined that the public interest in protecting the confidentiality of personal medical information, protecting the privacy of surviving loved ones and protecting surviving loved ones from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in 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, present at the location during the incident, and 911 callers, 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;
- 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 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 expectation of privacy on the part of individuals in their personal lives 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.* *Linzmeier*, 254 Wis. 2d 306, ¶¶ 31-32.

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 outweigh 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, as well as information that identifies specific tactical duty assignments, in the interest of protecting the safety of officers, their families, and their homes. In performing the public records balancing test pursuant to the Wis. Stat. § 19.35(1)(a), I concluded that revealing specific routine days and hours worked by law enforcement personnel and specific tactical qualifications created a real and likely threat to officers, their families, and their homes. The public interest in protecting law enforcement personnel and their families and not endangering their safety and ensuring the safety and security of their homes outweighs the public interest in the disclosure of specific routine hours worked.

Wisconsin State 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 Crime Lab by outside independent laboratories.

Emergency medical personnel from Town of Salem, Fire/Rescue responded to the shooting scene to provide medical care for Darren Fude. The ambulance run records and medical information provided to DCI by these emergency medical personnel have 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 *15-5925/9* documents DOJ's receipt of evidence and the associated Evidence Release Receipts from the Office of the Milwaukee County Medical Examiner. 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 *15-5925/57* documents DOJ's receipt of the final autopsy protocol and the investigative report for Darren Fude, provided by the

Milwaukee and Kenosha County Medical Examiner's offices. The DCI reports have been included with the released records; however, the attached records, provided by the medical examiner's offices, have been wholly redacted from the release. These records were provided to DOJ by the Milwaukee and Kenosha 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 agreement 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' reports were provided to DOJ and in cooperating with the medical examiners' offices so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the reports would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Milwaukee and Kenosha County 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 Milwaukee and Kenosha County Medical Examiner's Offices provided the reports to DOJ, outweighs any public interest in disclosure by DOJ of the reports. *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 Milwaukee and Kenosha County Medical Examiners.

DCI reports numbered *15-5925/25, 26, 31, 38, 39, and 40* documents DCI's receipt and review of audio recordings of various responding firefighter/paramedic interviews. Audio records for these materials were provided to DCI, and DCI's review of the audio records is documented in these reports. These reports are 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. Should you wish to request copies of the related audio records for this report, please contact me and specify which of those you would like to receive, and we will then proceed with the necessary redaction and preparation.

National Crime Information Center (NCIC) and Crime Information Bureau (CIB) records have been redacted. These records are provided to law enforcement personnel only, require certification to access, and are confidential and prohibit secondary dissemination. Disclosure of such information by DOJ in violation of the prohibition would preclude future information sharing and significantly impair other cooperative law enforcement efforts between DOJ and other law enforcement agencies and organizations. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in access to NCIC and CIB records and in cooperating with other law enforcement agencies and organizations outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. Additionally, I concluded that the public interest supports maintaining the confidentiality of these law enforcement investigative techniques and 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 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.

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 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, appearing to read "Paul M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw