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To Whom This May Concern:

In response to public records requests received by the Wisconsin Department of Justice (DOJ), a copy of DOJ's Division of Criminal Investigation (DCI) investigative case file for DCI's investigation into the January 8, 2016 shooting by Town of Geneva Police Department Officers Eric Anderson and Jason Sweeney, which resulted in the death of Eric Olsen, has been prepared for release.

The DCI case in question is **16-101: Town of Geneva OID – Eric Olsen**. 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 DOJ Communications Director John Koremenos at koremenosj@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).

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 graphic images of Eric Olsen at the scene, in the ambulance following the shooting, and during his subsequent autopsy. In performing the balancing test, I determined that the public interests in protecting the privacy of the Olsen family, and in facilitating cooperation with law enforcement in sensitive investigations, outweigh any public interest in disclosure of the described images. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶ 38, 254 Wis. 2d 306, 646 N.W.2d 811.

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. 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. In preparing these records for release, I determined by application of the Wis. Stat. § 19.35(1)(a) balancing test that these public policies requiring that crime victims be treated with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the names of victims, wholly unrelated to the officer-involved shooting incident, who are listed within criminal history records included in this DCI case 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; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. 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 family members of Eric Olsen, adult witnesses and other individuals mentioned by persons who were interviewed by law enforcement.

First initials for the names of adult individuals mentioned in this investigative file have been left unredacted. Mr. Olsen’s name has been included in media accounts and is not redacted from DCI records; where mentioned family members share the name Olsen it has been left unredacted, with the first name redacted to first initial. The name of the homeowner at the site of the officer-involved shooting incident has not been redacted because he volunteered for on-camera interviews by news media, so his name is already in the public domain. The names of law enforcement officers and other public employees mentioned in the records are not redacted.

- Full names of juveniles interviewed or mentioned by other witnesses.

Revealing the names of the juveniles who were interviewed as witnesses is not essential to understanding the information they provided. The names of the parents of the referenced juveniles were also redacted, to avoid identifying the juveniles.

- 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 the license plate information for one of these individuals' vehicle which reveals the individual's name.
- Pass codes and access IDs provided by witnesses to facilitate consensual search by law enforcement officers of the witnesses' cell phones.
- Audio and video recordings of witness interviews and witness calls to 911.
- Images of the interior of the residence where the incident occurred.

Video recordings and photographs taken at the scene of the incident include images from the interior of this residence; however, the incident occurred outside, and the interior images were not pertinent to DCI's investigation. The exterior scene video and photographs, including images of the window at this residence that was broken by Mr. Olsen, remain within the records produced for release, with the exception of images of Mr. Olsen's body, redacted for the reasons set forth above.

- The image of the face of a driver passing the scene of this incident, as he was being directed to detour by officers at the scene, which was captured within the squad video related to this incident. (The face of the driver has been blurred during the brief period where it was visible.)

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 interests in protecting the privacy of these individuals, and in facilitating cooperation with law enforcement in sensitive investigations, also outweigh 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, driver's license numbers and social security 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, driver's license numbers or social security numbers of individual persons.

Birthdates, home addresses and personal telephone numbers of law enforcement officers have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

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 address of the scene where the officer-involved shooting incident occurred has not been redacted because that address has been widely publicized, and pursuant to the balancing test, I determined that public interest in disclosure of that address outweighs the privacy interests of the resident. Secondly, where investigators conducted interviews of neighbors in the area of the shooting, only the street numbers of those addresses have been redacted because the reports make clear this was a neighborhood canvass of addresses in the vicinity. It should also be noted in several reports the entry under "location of event" bears an incorrect street number, rather than the actual address at the scene. The listed street number in these entries actually belongs to a neighbor/witness, and therefore that number was redacted for the reasons set forth above.

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.

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 outweighs 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 law enforcement agencies involved have not been redacted from the records.

Similarly, the non-public cell telephone numbers for emergency medical personnel and the doctor who responded to the scene have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general office numbers for these personnel are publicly available. Therefore, I determined that the public interest in facilitating efficient and effective work by emergency medical personnel is furthered by preventing unnecessary interruption and disruption of these individuals' important official responsibilities if their non-public cell telephone numbers were to become public, and that that public interest outweighs any public interest in disclosure of these cell telephone numbers.

Bank account numbers of individuals have been redacted pursuant to Wis. Stat. § 19.36(13).

Individual account numbers for Mr. Olsen's medical record and YMCA membership, reflected on records contained within his wallet, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I have determined that the public interest in protecting the confidentiality of this economically valuable individually identifiable information outweighs any public interest in disclosure of these individual account numbers.

I redacted a fingerprint impression pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Providing the fingerprint without redaction creates the potential for access to a unique bio-marker by others who could use this information in attempts to impersonate the subject of the record. In conducting the balancing test, I concluded that the public interest in protection against the illicit use of fingerprint records outweighs any public interest in disclosure of this information.

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 also has been redacted from the records prior to release.

FBI numbers or information indicating whether or not FBI numbers exist has been redacted pursuant to 28 C.F.R. §§ 20.21(c)(2) and 20.33, because disclosure of the existence or non-existence of FBI numbers impermissibly would indicate the existence or non-existence of federal criminal history. Any reference to a state ID card has been redacted pursuant to Wis. Stat. § 343.50(8).

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, the officers' families, and the officers' homes. In performing the balancing test, I determined that the public interest in protecting the security of the officers, the officers' families, and the officers' homes outweighs any public interest in information regarding their routine shifts. Details regarding the specific shifts worked by officers on the day of the officer-involved shooting incident on January 8, 2016 have not been redacted from the records.

EMT personnel working with the Paratech and Medix ambulance services and as volunteers with Elkhorn Rescue responded to the shooting scene to provide medical care for Mr. Olsen. Excerpts from DCI records that document patient assessment and treatment information provided by responding EMT personnel have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c).

Patient health care records and information obtained from those records has been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82. Certain other medical information – including the names of prescription medications for Eric Olsen where visible within photographs taken in his vehicle and in his bedroom, and medical details provided by callers to 911 in Walworth County who were seeking assistance from dispatchers regarding emergencies wholly unconnected with the officer-involved shooting incident – while not directly governed by Wis. Stat. § 146.81 and 146.82, have been redacted 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. §§ 148.81 and 146.82. I find that the same underlying public policy of protecting the confidentiality and privacy of personal medical information outweighs any public interest in disclosure of the above-described medical information. Where prescription medications are mentioned in connection with usage as street drugs, the medicine names are not redacted.

DCI report number *16-101/44* documents DOJ's receipt of the autopsy and toxicology records for Eric Olsen, provided by the Waukesha County Medical Examiner's Office, which provides medical examiner services for Walworth County. The DCI report has 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 Waukesha County Medical Examiner's Office on the condition that the reports would not be shared with any person outside the criminal investigation, and the medical examiner's office 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 examiner's reports were provided 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 reports would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Waukesha County 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 Waukesha County Medical Examiner's Office provided the reports to DOJ, outweighs any public interest in disclosure by DOJ of the report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, the medical examiner's records may be requested directly from the Waukesha County Medical Examiner's Office records custodian.

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.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

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