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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 April 3, 2016 shooting by Eau Claire County Sheriff's Department Deputy Dustin Walters, which resulted in the death of David Mack, has been prepared for release.

The DCI case is **16-1777: Eau Claire County OID – Queen's Laundromat**. 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 the following information:

- Graphic photographs and video of David Mack at the scene, in the hospital following transport to that facility for treatment and during his subsequent autopsy.
- Audio content capturing Mr. Mack after being shot.

- Graphic images taken at the scene of the shooting at The Queen’s Laundromat. (Video content that captures Mr. Mack’s interaction with the officer that resulted in the fatal shooting is not redacted from the video record. However, once Mr. Mack is shot, his image has been blurred from the video, while still showing the subsequent actions of law enforcement officers and other first responders.)

In performing the balancing test, I determined that the public interest in protecting the privacy of this family, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of the described records. *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 federal criminal history records related to David Mack, or the names of individual residents at a women’s shelter located near the scene of the shooting incident.

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*, 2002 WI 84, ¶¶ 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 adult witnesses, family members and others mentioned by individuals interviewed.

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.

- 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.
- Digital images of witnesses and other individuals that appear within photographs of the contents of David Mack's vehicle, which included some personal photographs.

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

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.

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

Birthdates of law enforcement officers and other public employees 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. Addresses for the scene and neighboring businesses have not been redacted. Where investigators conducted interviews at residences of other neighbors in the area, only

street numbers and/or apartment numbers at those addresses were redacted, because the reports make clear this was a neighborhood canvass of addresses in the vicinity.

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

Similarly, the non-public cell telephone numbers for Eau Claire County Medical Examiner Chris Kruse, and for two employees at the Ruth House women's shelter located in the vicinity of the shooting incident, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general numbers for these agencies are publicly available. I determined that the public interest in these individuals performing their job responsibilities without disruption and unnecessary interruption if their direct cell phone numbers became public knowledge, and in facilitating citizen cooperation with law enforcement investigations, outweighs any public interest in disclosure of the non-public cell phone numbers for these individuals. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

Bank account numbers of individuals have been redacted pursuant to Wis. Stat. § 19.36(13). Individual account numbers for telephone, wireless, medical and insurance accounts of individuals also have been redacted, as have personal identification numbers, pass codes and other access codes for these individual accounts. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I 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 and access code numbers.

The case file includes copies of individual federal and Minnesota tax records obtained by DCI agents from the vehicle of the deceased pursuant to a search warrant. These returns contain economically valuable personal and financial information. The public interest in protecting the privacy and confidentiality of individual Wisconsin tax returns is evidenced by Wis. Stat. § 71.78, which restricts redisclosure of tax returns obtained from the Wisconsin Department of Revenue. Although the tax records contained in this case file were not obtained directly from the Wisconsin Department of Revenue, the same public policy supporting confidentiality and privacy of this economically valuable personal and financial information applies to these records. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, therefore, I determined that the public interest in protecting the privacy and confidentiality of these tax records outweighs any public interest in their disclosure.

Records provided confidentially to DOJ by the U.S. Marshal's Service, as documented in case report **16-1777/16**, have been redacted. The U.S. Marshal's Service provided these records to DOJ for its internal use only, on the condition that these records remain the property of the federal government and may not be redistributed outside DOJ without an express order from a federal judge. The U.S. Marshal's Service would not have provided these records to DOJ without DOJ's acceptance of those conditions. 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 the U.S. Marshal's Service provided the records to DOJ and in cooperating with the U.S. Marshal's Service 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 report-sharing and significantly impair cooperative law enforcement efforts between DOJ and the U.S. Marshal's Service. 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 U.S. Marshal's Service provided these records to DOJ, outweighs any public interest in disclosure by DOJ of these federal records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

A copy of Mr. Mack's death certificate, attached to DCI report number **16-1777/44**, has been redacted pursuant to Wis. Stat. §§ 69.20 and 69.21, which permit only the state registrar of vital statistics and local registrars to provide copies of vital records.

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. Audio content within squad video being produced in this case, which captures a discussion between two officers involving specific information regarding their children, has been redacted for these same reasons. 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 or their children. Details regarding the specific shifts worked by the officers involved in the April 3, 2016 shooting incident have not been redacted from the records.

Specific information with case report **16-1777/23** that reveals the quantity and location of security cameras employed by several different businesses in the vicinity of The Queen's Laundromat has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in protecting the security of these businesses and the people who work there outweighs any public interest in detailed information regarding these businesses' security systems. Information regarding the results of DCI's canvass for and review of related surveillance video is documented in the report.

Images of pornography magazines that were located within Mr. Mack's vehicle have been partially redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. There is a public interest in not disclosing complete pornographic images that are available commercially, and there is no strong public interest in the disclosure of images of pornography magazines found within this investigative file. In performing the balancing test, I concluded the public interest in disclosure of images of pornography magazines is outweighed by the interest in nondisclosure. *See also* Wis. Stat. 19.32(2) ("Record' does not include . . . materials to which access is limited by copyright . . . and published materials . . . which are available for sale . . .")

Patient health care records and information obtained from those records has been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82.

Eau Claire Fire Department Emergency Medical Services (EMS) personnel responded to the shooting scene to provide medical care for Mr. Mack. 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).

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.

DCI reports numbered **16-1777/14, /30, /41** and **/45** document DOJ's receipt of autopsy and toxicology records for David Mack, produced by medical examiners in Ramsey County (Minnesota) and Eau Claire County (Wisconsin) and provided to DOJ by the Eau Claire County Medical Examiner's Office. These DCI reports are included with the released records; however, the related records, provided by the medical examiner's office, have been wholly redacted from the release. Those records were provided to DOJ by the Eau Claire 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 Eau Claire 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 Eau Claire 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. Excerpts from the medical examiner's records, quoted within DCI report number *16-1777/14*, have been redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Eau Claire County Medical Examiner's Office records custodian.

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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