



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

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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 23, 2016 shooting by Antigo Police Department Officer Andrew Hopfensperger, which resulted in the death of Jakob Wagner, has been prepared for release.

The DCI case in question is **16-2261: Antigo High School OID – Jakob E. Wagner**. 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 outweighs any legitimate public interest in disclosure of the following information:

- Graphic photographs of Jakob Wagner in the hospital following the shooting and during his subsequent autopsy.
- Graphic images taken at the scene of the shooting at Antigo High School.

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, 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. 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 outweigh any legitimate public interest in disclosure of the following records and information pertaining to the four students who were shot at by Mr. Wagner:

- The names of three of these four individuals have been redacted except initials. (The name of the fourth individual, Collin Cooper, has not been redacted because he volunteered for interviews with news media, and therefore, his identity is already in the public domain.)
- Other information that would identify the three individuals who are identified only by their initials within the DCI records as prepared for release.
- Dates of birth, home addresses, home and personal cell telephone numbers and signatures for all four of the individuals have been redacted, along with information identifying their employment and routine work schedules and/or the names of schools attended (other than Antigo High School).
- Photographs of Collin Cooper taken while he was being treated in the hospital.
- Digital images of the four victims at the scene and graphic images of their blood at the scene of the shooting at Antigo High School.

Where a portion of an image includes graphic content related to these four victims, that portion of the image has been redacted. (For example, if there is graphic content within a still photo, that portion of the photograph is redacted; where such images occur within video recordings, the graphic portion of the video image is blurred.)

- The voices of these four victims have been redacted wherever audible within audio and video recordings being released in connection with this investigation, including from an audio recording of a 911 call placed by one of the victims.

In performing the balancing test, I determined that the public policy interest in avoiding unnecessary intrusion into the personal lives of these four victims 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 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*, 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 witnesses, family members, and others mentioned by individuals who were interviewed during this investigation, including adult and juvenile students.

Initials for the names of these individuals have been left unredacted. The names of law enforcement officers, school employees and other public employees mentioned in the records have not been 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, along with information identifying their employment and routine work schedules and/or the names of schools attended (other than Antigo High School.)

- Voices of adult witnesses, such as parents collecting children from the high school, have been redacted wherever audible within audio and video recordings being released because this audio content would identify these witnesses.
- Digital images of witnesses, such as parents collecting children from the high school, have been blurred where visible within squad video recordings being released. Digital images of a friend of Mr. Wagner and of juvenile children of other customers captured by store surveillance video have been redacted from those video records.

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, 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 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 or social security numbers of individual persons.

Driver's license numbers of individual persons and personal identifying information obtained from driver's licenses included within a list of hospital employees involved in patient care related to this officer-involved shooting investigation also 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 interest in 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 this information.

Home addresses, home telephone numbers, personal cell telephone numbers and 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 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.

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 direct telephone number for a DCI analyst has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general number for DCI is publicly available. I determined that the public interest in this individual performing his job responsibilities without disruption and unnecessary interruption if his direct phone number became public knowledge outweighs any public interest in disclosure of the non-public direct phone number for this analyst. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

Bank account numbers of individuals have been redacted pursuant to Wis. Stat. § 19.36(13). Images of a credit card scanner and cashier computer screen have been blurred where visible within business surveillance video produced for release in connection with this investigation pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in protecting the confidentiality of the economically valuable individually identifiable information visible within these images outweighs any public interest in disclosure of this information. The activity within these surveillance videos which is of public interest remains visible in the redacted video record as produced for release.

Content within receipts from Fleet Farm that reveals specific details pertaining to payment transactions, as referenced in and attached to case report **16-2261/57**, 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 this business and its customers outweighs any public interest in these specific details pertaining to customer payment transactions. Information within these receipts that reveals information of interest to investigators, including the types of purchases made and the date of purchase, has not been redacted from the copies of these records as produced for public release.

Architectural drawings of Antigo High School were provided to the Wisconsin State Patrol for their use in producing records documenting the scene of this officer-involved shooting, and the copies of those drawings which are included within this DCI case file have been redacted from the records produced for release pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Although these drawings are not directly governed by Wis. Stat. § 19.36(9), which restricts public release of drawings of buildings owned or leased by the State of Wisconsin, I determined that the same underlying public policy of protecting the confidentiality of these types of building records in the interest of preserving the security of the public building outweighs any public interest in disclosure of these records. The scene diagrams created by the Wisconsin State Patrol, referencing these drawings to the extent necessary, are included with the records produced for release.

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 the officers involved in the shooting incident at Antigo High School have not been redacted from the records.

Certain information about confidential law enforcement investigative techniques and equipment, which reveals specific details regarding how to access weapons carried by the officers involved and how the canine officer assigned to one of the officers involved is deployed and directed during an investigation, has been redacted to preserve the effectiveness of those confidential techniques and that equipment. Public disclosure would undermine law enforcement's ability to use those techniques and that equipment effectively to investigate criminal activity and would threaten the safety of the officers. I determined that the public interest in effective investigation and prosecution of criminal activity, including the ability of law enforcement to gather information confidentially when conducting sensitive investigations, and in protecting the safety of law enforcement personnel, outweighs any public interest in disclosure of this information. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Information regarding routine child care arrangements for one of the officer's families has 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 avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law enforcement report and the public interest in respecting the privacy and safety of the families of public employees – especially those involved in law enforcement and criminal prosecution – outweighs any legitimate public interest in tangentially mentioned information about the officer's family.

Pursuant to the balancing test, specific details regarding a prescription medication taken routinely by one of the officers involved, for health maintenance unrelated to his ability or judgment in connection with his work, has been redacted. 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 redacted information concerning the officer.

Crime Lab records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2), with the exception of Crime Lab records documenting Crime Scene Response Team (CSRT) activity at the scene, which are exempt from the statutory restrictions governing release of Crime Lab analysis documentation. 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.

Emergency medical personnel responded to the shooting scene to provide medical care for Mr. Wagner and his victims. Excerpts from DCI records that document patient assessment and treatment information provided by responding emergency medical personnel have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c).

Certain medical information related to the treatment of Mr. Wagner and his victims at the hospital following this shooting incident has 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 redacted information. Photographs taken of these individuals while being treated at the hospital also have been redacted for the same reason.

Autopsy and toxicology records for Mr. Wagner were provided to DCI by the Fond du Lac County Medical Examiner's Office. The DCI report documenting receipt of these records has been included with the case file as produced for release; 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 Fond du Lac 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 Fond du Lac 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 Fond du Lac 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, where quoted within DCI reports, also have been redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Fond du Lac 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.

As documented in DCI report **16-2261/33**, the Langlade County Sheriff's Office took photographs inside the Wagner residence during execution of a search warrant. As required by Wis. Stat. § 19.356(2)(a)2., because these records were obtained by search warrant, pre-release notice has been served on the record subject of these records. These records are not included from the release at this time, pending passage of the statutory time frames set forth in Wis. Stat. § 19.356(3)-(5). The redacted records will be produced as a supplemental record release after these statutory time frames conclude.

There are a small number of reports in DCI case file **16-2261** which cannot be made public at this time because they are restricted in connection with sealed search warrants. Accordingly, you will note that reports numbered **16-2261/41, 42, 43, 44, 45, 46, 55, 58, 62, 63, 67, 71, 80, 81, 82** and **78** are not included within the case file copy as currently available for release. Once these seals expire, because the records were obtained by search warrant, Wis. Stat. § 19.356(2)(a)2 may require that DOJ serve notice on record subjects of these records prior to release. These records, along with the related DCI reports as listed above, will be included in a supplemental release of records related to this investigation, pending expiration of the court-ordered seals and passage of any necessary statutory time frames set forth in Wis. Stat. § 19.356(3)-(5).

Review remains underway for the numerous record copies included on a hard drive provided to DCI as documented in report **16-2261/74**. Although it appears likely that many of the digital records on this hard drive are duplicates of records already reviewed by DCI investigators as documented earlier in the case file and included with the records being made available at this time, the contents of this hard drive are being reviewed in full so that any records it contains that are not duplicative can be produced for inclusion in a supplemental post of records related to this case. It should also be noted that report **16-2261/51** documents DCI's review of pertinent segments of squad video as initially provided to DCI; the hard drive referenced in **16-2261/74** was found to contain longer versions of these squad video records, with many hours beyond the officer-involved shooting incident that do not include any footage pertinent to DCI's investigation. The squad video records being made available at this time, while longer than the "trimmed" versions first referenced in **16-2261/51**, still do not include the full length of footage later provided to DCI as referenced in **16-2261/74**. Should you wish to have those additional hours of footage produced for release, please contact me.

Finally, it should be noted that DCI report **16-2261/84** documents the production of scene reports by the Wisconsin State Patrol. The State Patrol Scene Mapping & Diagram report is included in this release, along with the various maps and diagrams they produced. Review currently remains underway for the numerous supporting records utilized by the State Patrol in producing their reports. It appears likely that many of these referenced records will be found to duplicate records already reviewed by DCI investigators and documented elsewhere within the DCI case file; any records that are not duplicative will be addressed in a supplemental post of records related to this case, once review is completed. Architectural drawing referenced in this report are not being released for the reasons set forth above.

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 that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:pss