



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

July 18, 2016

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 30, 2016 shooting by Wausau Police Officer James Martin which resulted in the death of Oswald T. Mattner has been prepared for release.

The DCI case in question is **16-2425: Wausau PD OID**. 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 Johnny 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 images of Oswald Mattner taken at the scene.
- Autopsy photos of Mr. Mattner.

- Audio of calls to authorities from Mr. Mattner's family members.

In performing the balancing test, I determined that the public interest in protecting the privacy of Mr. Mattner's 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.

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 adult witnesses, family members and others mentioned by individuals interviewed or in related records.

Initials for the names of these individuals have been left unredacted. For family members who share the last name of Mr. Mattner, only the first names of the family members were redacted to the initial.

- 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 regarding places, types, and/or hours of work. For individuals residing in apartment buildings, the apartment numbers have been redacted, but the building numbers are being released.

- Audio and video recordings of witness interviews.

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.

The complete name and identifying information, including place of employment and vehicle description, of a domestic violence victim involved in this incident have been redacted. The name of a domestic violence victim has been redacted from a criminal complaint included in the DCI case file in order to protect his or her privacy. 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's 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 may serve the public interest to protect the privacy rights of those who could be considered victims entitled to these protections. 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.

Birthdates and driver's license 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 and driver's license numbers of individual persons.

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.

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.

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.

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.

DCI report numbers *16-2425/30*, *16-2425/73*, and *16-2425/83* document DCI's receipt of the Preliminary Autopsy Report, Autopsy Report, and Toxicology report for Oswald Mattner, provided by the Marathon County Medical Examiner's Office and the University of Wisconsin Hospital. The DCI reports have been included with the released records; however, the attached records, provided by the medical examiner's office and hospital, have been wholly redacted from the release. Those records were provided to DOJ by the Marathon County Medical Examiner's Office and the University of Wisconsin Hospital on the condition that the reports would not be shared with any person outside the criminal investigation, and they 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 that there is a public interest in honoring the conditions under which the medical examiner's reports were provided to DOJ and in cooperating with 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 reports would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the medical examiners. 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 Marathon County Medical Examiner's Office and the University of Wisconsin Hospital 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 and the toxicology report, quoted within DCI report numbers *16-2425/73* and *16-2425/83*, have been redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Marathon County Medical Examiner or the University of Wisconsin Hospital's records custodians.

The street address for the office of DCI agents who work at a confidential location shared by undercover agents has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect the security of the location and the safety of these agents and their ability to effectively investigate crime in undercover capacities. I determined that the public interest in protecting the confidentiality of these locations so that undercover agents can effectively investigate criminal activity, outweighs any public interest in disclosure of this confidential street address. Wis. Stat. § 19.35(1); *Linzmeyer*, 254 Wis. 2d 306, ¶ 41.

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, and the associated medical condition, 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.

The Wausau Fire Department and LifeQuest Services emergency medical personnel responded to the shooting scene to provide medical care for Mr. Mattner, and to a secondary scene to render aid to the domestic violence victim. 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), as have medical records for Mr. Mattner. Additionally, photographs of Mr. Mattner's hospital medical discharge records from a previous occasion taken within the residence have been redacted from the supplementary photographs associated with DCI report *16-2425/14*, pursuant to Wis. Stat. §§ 148.81 and 146.82.

The complete cellular telephone download of the phones used by Mr. Mattner and the domestic violence victim have been redacted. A portion of those downloads containing communications between Mr. Mattner and the victim, as well as some additional communications, is included in DCI reports *16-2425/51*, *16-2425/52*, and *16-2425/62*. The information contained within the complete downloads contains the telephone numbers and personal information of individuals wholly unrelated to this investigation, and 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.

Review remains underway of numerous police record copies provided to DCI as documented in report *16-2424/26*. Once the review is completed, the records will be made available for examination on the DOJ website.

DCI report number *16-2425/52* addresses a State search warrant executed for the contents of a cellular telephone seized during this investigation. The search warrant was issued and subsequently sealed by the Marathon County Circuit Court; therefore, the

warrant, affidavit, and seal order have been redacted, as the warrant remains under seal. See Wis. Stat. § 19.35(1)(a) (“Except as otherwise provided by law . . .”). However, the records obtained as a result of that warrant were not sealed by the court, and are being provided to you, subject to the enumerated redactions.

Kenosha County District Attorney’s office confidential attorney work product notes have been redacted. Attorney work product is a statutory and common-law exception to disclosure. See Wis. Stat. § 19.35(1)(a); see also *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27-28, 305 Wis. 2d 582, 740 N.W.2d 177 (“The common law long has recognized the privileged status of attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation.”); Wis. Stat. § 804.01(2)(c)1. See also *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 436, 477 N.W.2d 608 (1991) (“the common law provides an exception which protects the district attorney’s files from being open to public inspection”; “a common law limitation does exist against access to prosecutor’s files under the public records law”). Additionally, in applying the Wis. Stat. § 19.35(1)(a) balancing test, I determined the public interest in protecting confidential attorney work product outweighs the public interest in disclosure.

The Facebook passwords for Mr. Mattner and the domestic violence victim have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect her privacy as a victim and to protect her and Mr. Mattner’s family from any future harassment or harm. I determined that public policy requiring protection of the privacy and safety of victims and their families outweighed any public interest in disclosure of this information.

Information about confidential law enforcement techniques, including specific information regarding computer analysis tools, has been redacted to preserve the effectiveness of those confidential techniques. I determined that public disclosure would undermine law enforcement’s ability to use those techniques effectively to investigate criminal activity. I concluded that the public interest in the ability of law enforcement to use those techniques effectively outweighs the disclosure of information regarding law enforcement techniques. Wis. Stat. § 19.31; cf. *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

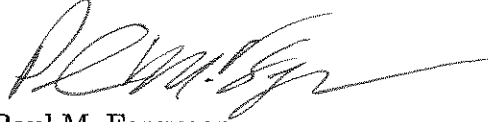
Finally, only one copy of records for which duplicate copies exist has been included with the records prepared for release. *Stone v. Bd. of Regents*, 2007 WI App 223, ¶ 20, 305 N.W.2d 679, 741 N.W.2d 774.

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.

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

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw