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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 May 5, 2016 shooting by Milwaukee Police Department Officers Jason Daering and Jesse Mattson, which resulted in the death of Burt Johnson, has been prepared for release.

The DCI case in question is **16-2566: Milwaukee PD OID – Burt Johnson**. 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 portions of photographs and video showing Mr. Johnson's body at the scene.
- Graphic portions of other photographs and video taken at the scene.
- Personal family photographs contained within Mr. Johnson's cell phone records.

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 full names or images of the two employees and one customer who were present during an armed robbery related to this officer-involved shooting incident. Accordingly, the names of these individuals have been redacted to initials only within the reports produced for public release, photographs of these individuals have been redacted, and the faces of these individuals are blurred where visible within released digital records.

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 and nicknames 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.

- Names of juveniles interviewed or mentioned by other witnesses.

Revealing the names of juveniles who were interviewed as witnesses or mentioned by other witnesses is not essential to understanding the information they provided. The full names of these juveniles have been redacted, along with the full names of their parents to prevent identification of these juvenile witnesses.

- 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 employers and/or routine work hours for these individuals.
- Audio recordings of witness interviews and witness calls to 911, and audio of one witness that can be heard within one of the related squad video recordings.
- Digital images of juvenile neighbors at the scene have been blurred where visible.
- Video content showing the interior of a neighbor's residence, which was captured by one officer's body camera during his walk-through of the residence to check for damage and ensure the welfare of the family members present, has been blurred to protect the privacy of this family, who were not connected with the shooting incident. Audio revealing the voices of the family in this residence has been redacted. Written records within the file that document this activity have not been redacted.
- Photographs of friends of Mr. Johnson, which were contained within Mr. Johnson's cell phone records but were not of interest in DCI's investigation, were redacted.
- Names and addresses pertaining to emergency calls unconnected with this incident, which are audible within the law enforcement and dispatch radio traffic being released, have been redacted to protect the privacy of the individuals involved.

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 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 or driver's license 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 have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

Home addresses, home e-mail 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. However, three 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. Second, where investigative records document activity related to the officer-involved shooting by noting the addresses of nearby homes, those addresses have not been redacted except in instances where the resident's name is associated with the address. Finally, where law enforcement conducted neighborhood canvass interviews in the vicinity of the shooting, only the street numbers and/or apartment numbers of those addresses were redacted, because the reports make clear these canvasses occurred on these area streets.

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).

Bank account numbers of individuals have been redacted pursuant to Wis. Stat. § 19.36(13). Individual account numbers for an insurance policy and Facebook account also have been redacted. 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 numbers.

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.

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 May 5, 2016 shooting incident have not been redacted from the records.

PeopleSoft personnel numbers for Milwaukee Police Department officers, which are analogous to social security numbers or other economically valuable individually identifiable information for these officers, 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 PeopleSoft numbers of individual law enforcement officers.

A Milwaukee Police Department personal identification number (PIN) referenced in one of that agency's reports has been redacted to protect the security of the related system, which would be compromised by public disclosure of this information. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the public interest in protecting the security of this police system outweighs any public interest in disclosure of the related PIN. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41.

DCI report number **16-2566/5** documents a uniform inspection completed for Milwaukee Police Officer Shane Bishop, who is the officer struck with a bullet during this incident. Photographs taken during that inspection are all included in the record release, with the exception of two images that show Officer Bishop without his shirt. Other images that show close-up views of the wounded area are included in the release. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I concluded that the public interest in respecting this officer's personal privacy outweighs any public interest in disclosure of the two redacted images. The public interest in the photographs of Officer Bishop documented in this report is satisfied by release of the other photographs that are being provided.

Specific information that reveals the password and other security details related to a safe located within the O'Reilly's store that was the victim of the armed robbery related to this officer-involved shooting incident 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 the people who work there outweighs any public interest in detailed information regarding the store's security systems. Detailed photographs of the store's safe and the cashier's area also have been redacted for the same reason. More general photos and video recordings that show the cashier's area of this business have not been redacted.

City of Milwaukee emergency services personnel responded to the shooting scene to provide medical care for Mr. Johnson and for Officer Bishop. Excerpts from DCI records that document patient assessment and treatment information provided by EMS personnel have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c).

DCI reports numbered **16-2566/8**, **16-2566/14** and **16-2566/49** and/or attachments with those reports document DOJ's receipt of autopsy records for Mr. Johnson, which were provided by the Milwaukee County Medical Examiner's Office. These DCI reports have been included with the released records; however, any attached records that were provided by the medical examiner's office have been wholly redacted from the release. Those records were provided to DOJ by the Milwaukee 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 Milwaukee 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 Milwaukee County Medical Examiner's Office 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. Excerpts from the medical examiner's records, such as those as quoted within DCI report number **15-2566/14**, have been redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Milwaukee County Medical Examiner's Office records custodian.

DCI report number **16-2566/58** documents the receipt and review of video surveillance recordings from O'Reilly's, and copies of the time period of those recordings pertinent to the investigation are included with the records produced for public release with redactions as explained in this letter. The remaining surveillance footage, which is not related to DCI's investigation, contains routine footage of customers and employees interacting during the time preceding the armed robbery. The footage we are providing includes the ten minute time period before the robbers entered the store. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined any public interest in the remaining surveillance footage is outweighed by the considerations outlined under Wis. Stat. § 19.35(1)(h). The public records law does not impose such heavy burdens

on a record custodian that normal functioning of the office would be severely impaired, and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530. The public interest is satisfied by release of the pertinent portion of the video surveillance recordings.

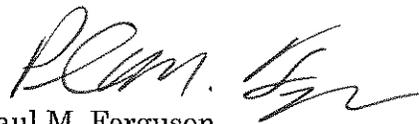
Finally, it should be noted that a few portions of the parole officer records included in this DCI case file, as documented in report number **16-2566/39**, were redacted by that agency before they provided the records to DCI. Those redactions appear to have been made by hand, rather than by computer, and can be recognized due to that stylistic difference.

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 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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

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