



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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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 June 30, 2016, shooting by Madison Police Department Officer Hector Rivera, which resulted in the death of Michael Schumacher, has been prepared for release.

The DCI case file name is **16-3971: Morrison Street OID – Michael Schumacher**. 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 official acts of public officers and employees. *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 Mr. Schumacher with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following records:

- Graphic images of Mr. Schumacher captured on video after the shooting, and graphic photographs of Mr. Schumacher taken in the hospital following the shooting and during his subsequent autopsy.
- Graphic images taken at the scene of the shooting at 1303 Morrison Street, Madison.

- Sections of reports documenting interviews with the deceased's father, Mr. Schumacher, have been redacted. At the time of his interview, Mr. Schumacher shared certain information with law enforcement under a pledge of confidentiality. The confidential portions of the interviews have been redacted from the DCI reports prior to release under the Wis. Stat. § 19.35(1)(a) balancing test. I have concluded that the public interest in law enforcement's ability to obtain cooperation from witnesses that may be critical to an investigation outweighs the public interest in disclosure of this highly personal information.
- Mental health documents and information regarding Mr. Schumacher.
Mental health registration and treatment records have been redacted pursuant to Wis. Stat. § 51.30(4); *Watton v. Hegerty*, 2008 WI 74, ¶ 25, 311 Wis. 2d 52, 751 N.W.2d 369. Other mental health information concerning the deceased also has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest and expectation of privacy in this type of information is embodied in the confidentiality accorded mental health registration and treatment records in Wis. Stat. § 51.30; *cf. Watton v. Hegerty*, 2008 WI 74, ¶ 25, 311 Wis. 2d 52, 751 N.W.2d 369 (legislative recognition of public interest in protecting confidentiality of individuals' mental health information). I have determined that the same public policy respecting the confidentiality of this individual's mental health information reflected in Wis. Stat. § 51.30 outweighs any public interest in disclosure of mental health information about him.
- Prescription medication information for Mr. Schumacher.
Information that specifically identifies medications prescribed for Mr. Schumacher 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 medical information about specific medications prescribed for Mr. Schumacher.

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 outweighed any legitimate public interest in disclosure of the names or other personally identifying information of these individuals where present within DCI case file records. Accordingly, the names, dates of birth, home and personal cell telephone numbers, signatures and employer information for this family have fully redacted from the records prior to release, along with the name of a family friend mentioned in the records. In addition, specific information describing the family home interior and floor plans, as well as images and portions of images taken inside the family home that were not pertinent to the recovery of criminal evidence, have been redacted from the records prior to release. (Portions of diagrams and photographs that were pertinent to documentation of the incident and collection of evidence have not been redacted.) Further, an audio recording of the homeowner’s 911 telephone call has been redacted from the records prior to release; the content of this call is documented in a transcript included with the related DCI report.

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 witnesses, family members and others mentioned by individuals who were interviewed during this investigation:

First initials for the names of these individuals are not redacted. The name of one minor child referenced in this case file has been redacted in full. The names of law enforcement officers, medical personnel, 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 and apartment numbers, home and personal cell telephone numbers, signatures, information identifying place of employment,

exact locations of homes in relation to the crime scene, and pier numbers and/or items on lawns that would identify these individuals' residences were redacted.

- The digital image of an individual identified as having a 'ring doorbell' video that was reviewed in connection with this case has been blurred within the video prior to release, and the individual's voice is redacted. The digital image and voice of the person ringing the doorbell also has been redacted, because law enforcement review of this video could not confirm the identity of that individual.
- Audio recordings of witness interviews and a witness call to 911.

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.

Information contained within the DCI records that was obtained by querying a Wisconsin Department of Transportation (DOT) Division of Motor Vehicles (DMV) database has been redacted pursuant to the federal Driver's Privacy Protection Act, which prohibits release of this information in response to a public records request. *See* 18 U.S.C. § 2721 et seq.; *New Richmond News v. City of New Richmond*, 2016 WI App 43, 881 N.W.2d 339.

An image obtained through driver license records has been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205.

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. Wis. Stat. 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 interests 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.

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 interests 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.

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

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.

Madison Fire Department EMS responded to the shooting scene to provide medical care for Michael Schumacher. Copies of Madison Fire Department reports contained within the DCI case file have been redacted pursuant to Wis. Stat. §§ 256.15(12) and 146.82(5)(c), except for the information authorized for release by Wis. Stat. § 256.15(12)(b). In view of the strong public policy protecting the confidentiality of personal medical information expressed in Wis. Stat. 146.82(5)(c), and in accordance with Wis. Stat. § 256.15(12),

excerpts from these EMS reports also have been redacted where present within related DCI case reports.

Certain medical information related to the treatment of Mr. Schumacher 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.

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 1303 Morrison Street the night of the incident have not been redacted from the records.

Certain information about confidential law enforcement investigative techniques and equipment 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 officer safety. I determined that the public policies favoring effective investigation and prosecution of criminal activity interest, including the ability of law enforcement to gather information confidentially when conducting sensitive investigations, and in protecting the safety of law enforcement personnel, outweigh any public interest in disclosure of this information. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Autopsy and toxicology records for Mr. Schumacher were provided to DCI by the Dane 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 Dane 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 Dane 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 Dane 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 Dane County Medical Examiner's Office records custodian.

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 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