



STATE OF WISCONSIN
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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 July 26, 2016 shooting by Lincoln County Detectives Brian Kingsley and Randy Ruleau, Langlade County Deputy Thomas Connelly, and Antigo Police Department Officer Joseph Husnick, which resulted in the death of Scot Minard, has been prepared for release.

The DCI case is **16-4507: Lincoln County OID – Scot Minard**. 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 of Scot Minard taken at the scene, in the ambulance and during his subsequent autopsy.
- Graphic images taken at the scene of the shooting on Hillview Road in Merrill.

- Detailed autopsy and toxicology reports pertaining to Scot Minard.

Information summarizing the results of the autopsy and toxicology testing has been extracted from these reports and included within the DCI reports being produced, and a copy of the initial portion of the autopsy report itself is also included. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, and in view of the strong public policies protecting the confidentiality of personal medical history information and the privacy rights of a deceased person's surviving loved ones, I determined to release only those portions of the pathologist's autopsy report and the toxicology results for Mr. Minard, with the exception of one small section of “additional findings” that lists medical assessment information regarding Mr. Minard that is not related to the shooting. The remainder of Mr. Minard’s autopsy report was not significant in DCI's investigation of this matter. In considering whether to release the remaining pages of the autopsy report and the detailed toxicology report, I weighed the existence of any public interest in disclosure of this information against the public interest in maintaining the privacy of Mr. Minard’s surviving family members. *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004) (applying federal Freedom of Information Act to release of death scene photos, reasoning that invasion of family privacy is unwarranted where no significant public interest, “more specific than having the information for its own sake,” would be advanced by release and likely to be advanced by release). Under these circumstances, I concluded that the public interest in confidentiality of Mr. Minard’s private medical information and privacy of his surviving loved ones outweighs any public interest in disclosure of the full reports.

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 or other personally identifying information of these individuals where present within the DCI case file records. Accordingly, the names, addresses, and license plate numbers for these individuals have been fully redacted from the reports prior to release. Additionally, pursuant to the balancing test, I redacted details regarding the security system present in one victim’s home to preserve the privacy and safety of the victim and the victim’s

family. I determined the public interest in disclosure of this information is outweighed by the public interest in preserving the privacy and safety of the victim and the victim's family.

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 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.

Initials of the names of these individuals have been left unredacted. Mr. Minard's name has been included in media accounts and is not redacted from DCI records; where mentioned family members share the name Minard, it has been left unredacted, with the first name redacted to the initial. The names of law enforcement officers and other public employees mentioned in the records are not redacted.

- Full names of juveniles interviewed or mentioned by witnesses.

There is no public interest in revealing the names of children who were simply mentioned in investigative reports who were of no relevance to DCI's investigation.

- 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.

In performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of witnesses and other persons 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, 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, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20 and 801.21, 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.

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.

Birthdates and home telephone numbers of law enforcement officers 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. Two exceptions were made. First, for the homes located along Hillview Road in the area where the shooting incident occurred, only street addresses and/or fire numbers for those homes have been redacted, because the street name has been widely publicized. Second, where investigators conducted interviews of neighbors in the area of the shooting, only the street numbers of those addresses have been redacted, because the reports make clear this was a neighborhood canvass of addresses in the vicinity.

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, direct cell telephone numbers for EMS personnel who responded to this incident have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general numbers for these responding 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 outweighs any public interest in disclosure of the direct cell phone numbers for these individuals. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

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.

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

An individual pharmacy account number has been redacted, along with information regarding the access code for this account. 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.

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.

Information containing specific details regarding weapons assigned to law enforcement personnel has been redacted to preserve the security and effectiveness of the law enforcement officers. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined that the public interest in effective investigation of crime and protection of public safety, including protecting the ability of law enforcement to

respond in emergency situations without jeopardizing officer safety or undermining officer effectiveness by revealing their equipment and techniques, outweighs any public interest in disclosure. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

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 July 26, 2016 shooting incident have not been redacted from the records.

Firearms trace report information provided confidentially to DOJ by the federal Bureau of Alcohol, Tobacco, and Firearms ("ATF") has been redacted from case report **16-4507/97**. ATF provides firearms trace reports to DOJ for its internal use only, on the condition that firearms trace reports remain the property of ATF and may not be redistributed outside DOJ without express authorization from ATF. ATF would not have provided this report to DOJ without DOJ's acceptance of those conditions. ATF authorized DOJ to disclose only the substantive information from the firearms trace report as included within the narrative portion of case report **16-4507/97**. 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 ATF provided the report to DOJ and in cooperating with ATF so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the report would preclude future report-sharing and significantly impair cooperative law enforcement efforts between DOJ and ATF. I concluded that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which ATF provided the firearm trace report to DOJ, outweighs any public interest in disclosure by DCI of the ATF firearms trace report itself. *Cf.* *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Merrill Fire Department emergency medical services personnel responded to the shooting scene to provide medical care for Mr. Minard. Copies of EMS 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 reports also have been redacted where present within related DCI case reports. In addition, specific information regarding assessment and treatment for Mr. Minard by EMS personnel, as reported by them during interviews, has been redacted from the records 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. § 146.82. Even if Wis. Stat. § 146.82 does not directly govern the medical information included in these records, I find that the same underlying public policy of protecting the confidentiality and privacy of personal health

information, as well as the analogous restrictions on release of patient treatment information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of the redacted information.

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,

A handwritten signature in black ink, appearing to read "Paul M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

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