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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) case file for DCI's investigation into the August 5, 2016, shooting by Dodge County Sheriff's Department Sergeant Joseph Nicholas, which resulted in the death of James Quealy, has been prepared for release.

The DCI case file name is **16-4768: Dodge County OID – James Quealy**. That 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](http://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](mailto: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. Quealy with respect for their privacy and dignity outweighs any legitimate public interest in disclosure of graphic photographs of Mr. Quealy captured at the scene and taken during his subsequent autopsy. In addition, photographs of Mr. Quealy's family members have been redacted where visible within photographs of the scene that are being produced for release. 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 names or other personally identifying information of these individuals where present within DCI case file records. Accordingly, the full names of individuals who lived in the home struck by a bullet have been redacted from the records prior to release, along with their dates of birth, home and personal cell telephone numbers, street number of their home, and signatures of family members. In addition, specific information describing the family home interior has been redacted, along with images revealing the home’s interior. Images showing damage within the interior of the victims’ home are included with the release, with personal family content redacted.

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; *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:

Initials for the names of these individuals were not redacted. Mr. Quealy’s name is included in media accounts so it is not redacted from DCI records; where mentioned family members share the name Quealy it is left unredacted, with first names redacted to initial. The names of law enforcement officers, medical personnel, and other public employees mentioned in the records have not been 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 name of the mother of one of the juveniles, to prevent identification of these juvenile witnesses.

- 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 places of employment, and specific locations of apartments in relation to the crime scene that would identify these individuals' residences were redacted.

- The photograph of an unknown individual, located within Mr. Quealy's wallet but of no interest in DCI's investigation, was redacted.
- Audio recordings of witness interviews and witness calls 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 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, outweigh any public interest in disclosure of the dates of birth, driver's license numbers, or social security 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.

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.

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.

Bank account and credit card numbers as well as bank account log-ins and passwords have been redacted pursuant to Wis. Stat. § 19.36(13). Even if this redacted information was not subject to Wis. Stat. § 19.36(13), I would redact the information pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of financial identifying information is expressed in Wis. Stat. § 19.36(13). I find that the same underlying public policy of protecting the confidentiality and privacy of financial identifying information outweighs any public interest in disclosure of the redacted information.

Individual account numbers of medical and insurance accounts of individuals 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 this information.

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.

Beaver Dam Fire Department EMS responded to the shooting scene to provide medical care for James Quealy. Copies of Beaver Dam 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.

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 the officers' routine shifts. Details regarding the specific shifts worked by the officers involved in the shooting incident at 215 Woodland Drive the night of the incident have not been redacted from the records.

Computer login ID codes for police department and Dodge County Communications Center personnel have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to safeguard the security of law enforcement officers and department personnel. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41. In performing the balancing test, I determined that the public interest in protecting the security of this system outweighs any public interest in obtaining computer login ID codes.

Specific details and images depicting SWAT and tactical team equipment and assignments for officers who responded to this incident have been redacted to preserve the security and effectiveness of these law enforcement techniques. 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; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Information that reveals undercover assignments for local law enforcement personnel has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of this information could endanger the safety of the law enforcement personnel. Additionally, providing this information could also jeopardize the operations of undercover personnel who

may be functioning in a role in which their true status as an active law enforcement officer is unknown to subjects, targets, witnesses, and others who interact with that undercover officer. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. I find that the public interest in revealing this information is outweighed by the public interest in effectively investigating and prosecuting criminal activity and in protecting the safety of law enforcement personnel and promoting effective law enforcement investigations. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

Specific information that reveals the location and code for emergency access to the apartment building where the shooting incident occurred, contained within the police CAD report, 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 residential building and the people who live there outweighs any public interest in this detailed information regarding the building management's emergency access arrangements.

Certain medical information has been redacted from the records prior to release 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, Wis. Stat. § 51.30, and the federal HIPAA. Although those privacy laws do not directly govern the redacted health information, I find that the same underlying public policy of protecting the confidentiality and privacy of personal health information outweighs any public interest in disclosure of this information.

Autopsy and toxicology records for Mr. Quealy were provided to DOJ 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 records 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 records 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 records 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 records to DOJ, outweighs any public interest in disclosure by DOJ of the records. *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 Wis. 2d 679, 741 N.W.2d 774.

The DCI case file contains audio recordings associated with the activity documented in case reports *16-4768/4* and *16-4768/35*. The content of these audio recordings is summarized within the related reports, which are included with the records we have produced for release. If you decide you would also like to have a redacted copy of the related audio recordings prepared for public release, please contact me.

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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