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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 August 19, 2016 shooting by New London Police Department Officers Ryan Denu and Brody Erickson, which resulted in the death of Kole Knight, has been prepared for release.

The DCI case in question is *16-5072: New London OID - Kole B. Knight*. 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 outweighs any legitimate public interest in disclosure of the following information:

- Graphic photographs of Kole Knight at the scene and during his autopsy.
- Graphic images taken at the scene of the shooting in New London.

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

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 of the individuals listed as victims within historical police records pertaining to Mr. Knight, which DCI received from other agencies during the course of the investigation of this officer-involved shooting incident. Accordingly, the names of these individuals have been fully redacted from the reports produced for public release.

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 and nicknames for adult witnesses, family members, and others mentioned by individuals interviewed.

Initials for the names of these individuals have been left unredacted. Mr. Knight’s name has been included in media accounts and is not redacted from DCI records; where mentioned family members share the name Knight it has been left unredacted, with the first name redacted to the initial. The name of one former girlfriend of Mr. Knight has not been redacted because she volunteered for interviews with news media, and therefore, her name is already in the public domain. The names of law enforcement officers and other public employees mentioned in the records are not redacted.

- Full names of juveniles mentioned by witnesses.

The public interest in the full names of such juveniles is outweighed by the public interest in maintaining the privacy 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.

- Audio and video recordings of witness interviews.
- Photographic images taken within the interior of the residence at 1015 Algoma Street, the location where the officer-involved shooting incident occurred in the front yard, have been partially redacted so that only the view to the outside, as referenced in related reports, is visible, and the interior of this private home, whose residents were not involved in the incident, is not visible.

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, social security numbers, 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, 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, social security numbers, or driver's license numbers of individual persons.

Birthdates 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. The address of the home in front of which the officer-involved shooting incident occurred has not been redacted because, pursuant to the balancing test, I determined that public interest in disclosure of that address outweighs the privacy interests of the resident. Secondly, where investigators conducted interviews of neighbors in the area of the shooting, only the street numbers and/or apartment 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.

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).

Crime Information Bureau (CIB) criminal history records, which are provided to law enforcement personnel only, require certification to access, and are confidential and prohibit secondary dissemination, have been redacted. Disclosure of such information by DOJ in violation of the prohibition would preclude future information sharing and significantly impair other cooperative law enforcement efforts between DOJ and other law enforcement agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in access to CIB criminal history records and in cooperating with other law enforcement agencies outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

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

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.

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 have been redacted to preserve the safety, 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 August 19, 2016 shooting incident have not been redacted from the records.

The name of an individual connected with a specific, ongoing criminal investigation conducted by the New London Police Department, which is unrelated to the officer-involved shooting incident, has been redacted from the audio of the officers' conversation that was captured by the squad video prior to their encounter with Mr. Knight. Disclosure of this name could adversely affect that ongoing criminal investigation. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the public interest in effective investigation of crime outweighs any public interest in disclosure of the individual's name. *Cf.* *Linzmeier*, 254 Wis. 2d 306, ¶¶ 26, 30, 32, 39.

Patient health care records and information obtained from those records has been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82.

Emergency medical service personnel from Gold Cross responded to the shooting scene to attend to Mr. Knight. Excerpts from DCI records that document patient assessment and treatment information provided by these personnel have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c). The contents of the report

prepared by these medical personnel has also been redacted except for those portions where disclosure is authorized by Wis. Stat. § 256.15(12)(b).

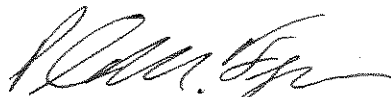
The DCI case file includes copies of autopsy findings for Mr. Knight provided to DCI by the Fond du Lac County Medical Examiner's Office. DCI reports documenting receipt of these findings are included with the released records; however, the attached records, provided by the medical examiner's office, 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 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 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 reports to DOJ, outweighs any public interest in disclosure by DOJ of the report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. 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 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