



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

May 19, 2017

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 March 2, 2017 shooting by Marathon County Sheriff's Department Deputy Brandon Stroik, which resulted in the death of John Hall, has been prepared for release.

The DCI case in question is **17-1342: Marathon Co OID - Hall**. 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 Johnny 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 the deceased with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following:

- Graphic photographs of Mr. Hall at the scene and during his subsequent autopsy.
- Graphic images taken at the scene of the shooting at the corner of Swan Avenue and Morning Glory Lane in Rib Mountain.
- Mrs. Hall's signature where it appears on consent forms she signed.

- Photographs of the interior of the Hall residence, taken during a search of the premises undertaken with the consent of Mr. Hall’s wife. The content of these photographs is described in DCI report number *17-1342/15*. Photographs specifically showing the path of a bullet as discussed in those reports have not been redacted.
- Video recordings captured by body cameras worn by Wausau Police Department Lieutenant Bill Taylor, Officer Brent Olson, and Officer Garrett Carr, documenting their interactions with Mrs. Hall during an initial contact with her at the Hall residence, transport to the area of the incident where they remained with her during ongoing negotiations, and subsequent transport back to her home, where they stayed with her until her mother’s arrival. The content of these recordings is described in DCI case reports numbered *17-1342/13*, *17-1342/14*, and *17-1342/43*. An additional video recording captured by Officer Olson’s body camera, which does not involve Mrs. Hall, has not been redacted from the release.
- Medical information regarding Mrs. Hall, provided by her during an interview and also mentioned by other family and friends during their interviews.

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 name or other personally identifying information for the individual who was present with Mr. Hall in his truck during this incident, believed by officers to be held as a hostage by Mr. Hall. Accordingly, where identifying information regarding this individual is present within DCI case file records, that information has been redacted. In addition to redacting personally identifying information for this individual, such as his name, date of birth, and address, the following redactions were made to protect his privacy and dignity:

- Images of this individual captured by Walmart surveillance cameras, as documented in DCI report number *17-1342/3*. Walmart surveillance photos and video are included with the released records with this individual’s head and face redacted or blurred.
- An audio recording of DCI’s interview with this individual, as referenced in DCI report

number *17-1342/18*. The DCI report documents the interview in detail.

- Explicit records capturing this individual's distress during the incident, including audio content within officer body camera recordings following the shooting.

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, including details regarding their employment. *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 redactions were made from the records prior to release:

- Names of adult witnesses, family members, and others mentioned by individuals interviewed have been redacted except for initials.

Where family members share the same last name as Mr. Hall, their first names have been redacted to the first initial only, but their last name is not redacted. Names of law enforcement officers and other public employees mentioned in the records have not been redacted.

It should be noted that, in report number *17-1342/24*, the officer being interviewed believed a first name he heard pertained to Mr. Hall, when it was actually Mrs. Hall. (Her first name also begins with a J.) Therefore, in that one report, wherever the officer uses Mrs. Hall's first name when referring to Mr. Hall, the name has been redacted to just the initial J.

- Details regarding employment for witnesses have been redacted.

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 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 of individual persons.

Birthdates, home addresses, and personal phone numbers of law enforcement officers and other public employees have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

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.

Photographs of driver's licenses have been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205.

Home addresses, personal email 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. It should be noted that, where investigators conducted interviews of neighbors in the area of the shooting, or referenced neighboring residences in connection with the general incident location, only the street numbers for those addresses have been redacted.

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.

The street addresses for the offices where DCI agents work at confidential locations shared by undercover agents have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect the safety of these agents and the ability of these agents to effectively investigate crime in undercover capacities. I determined that the public interest in protecting the confidentiality of these locations, so that undercover agents can effectively investigate criminal activity, outweighs any public interest in disclosure of these confidential street addresses. Wis. Stat. § 19.35(1)(a); see *Linzmeier*, 254 Wis. 2d 306, ¶ 41.

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

Overhead images of a transaction at Walmart referenced in this case file, which reveal the cashier's station payment drawer and computer access, were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test by blurring those portions of the images. 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 images exposing this business's payment security system. The pertinent details of this transaction remain visible in the records as included for release and are also described in related reports.

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 and at the autopsy, 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 March 2, 2017 shooting incident have not been redacted from the records.

Minimal specific, detailed information regarding the quantity and types of weapons assigned to law enforcement personnel has 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. However, all other descriptions, images, and details regarding the weapons assigned to and used by law enforcement personnel involved in the March 2, 2017 incident remains included within the DCI case file reports as produced for public release.

Emergency Medical Services personnel from the Wausau Fire Department responded to the shooting scene to provide medical care for Mr. Hall. A copy of their report contained within the DCI case file has 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 addition, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, information regarding their treatment of Mr. Hall, as described by these EMS personnel when interviewed by DCI, also has been redacted where present within DCI case reports, 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 the direction provided by Wis. Stat. § 256.15(12). Observations made regarding EMS activity as reported by law enforcement personnel who were present have not been redacted.

Patient health care records have been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82. I also determined to redact certain other medical information, although not directly governed by Wis. Stat. § 146.81 and 146.82, 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 this medical information.

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 portions of the pathologist's autopsy report for Mr. Hall. A summary of the autopsy and toxicology results provided by the pathologist is included within the narrative of DCI reports *17-1342/65* and *17-1342/70*, and copies of the referenced reports are also included in the records prepared for release. However, portions of Mr. Hall's autopsy report pertain to his general health and were not significant in DCI's investigation of this matter. In considering whether to release those portions of the autopsy report, I weighed the existence of any reasonable public interest in disclosure of this information against the privacy rights of Mr. Hall'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). I also considered the well-established public policy recognizing the confidentiality and privacy of personal medical information as expressed in Wis. Stat. § 146.82. Under these circumstances, I determined that the public interest in confidentiality of Mr. Hall's private medical information and privacy of his surviving loved ones outweighs any public interest in disclosure of these portions of the reports.

DCI report number *17-1342/6* documents the receipt and review of audio recordings from the Crisis Negotiation Team (CNT). As noted in that report and in interviews with CNT personnel documented elsewhere in the DCI case file, the team experienced some issues with their recording equipment during this incident, and only one of the five listed audio recordings is actually related to this officer-involved death investigation. Of the

remaining four recordings, one contains no audio at all and the other three all contain audio recordings of CNT training exercises. The relevant negotiator audio recording is included with this records release without redaction. The remaining four audio recordings, which are not related to this incident or investigation, have not been included with this release.

DCI report number **17-1342/19** documents a review of a video surveillance recording acquired from Aspirus Hospital, which lasts approximately three minutes and in which Mr. Hall's truck is visible in the Aspirus parking lot. As described within the related DCI case report, neither Mr. Hall nor his passenger are observed leaving the vehicle while it is at Aspirus, which is consistent with the statement provided by the passenger. The video surveillance copy received by DCI cannot be produced for public release except via a time-consuming screen capture procedure, which would require a considerable amount of staff time and resources. 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. Accordingly, regarding the Aspirus surveillance video described in DCI report **17-1342/19**, I determined that the public interest is satisfied by release of the related report, which thoroughly documents the contents of this video surveillance recording, and no copy of the video surveillance recording has been included with this public records release.

With the exception of the body camera video for Officer Carr and two of the three recordings for Officer Olson, which are not being produced for the reasons explained above, all of the squad camera video from the Marathon County Sheriff's Department as described in report **17-1342/1** and all of the body camera video from the Wausau Police Department as described in report **17-1342/7** has been prepared for release. These recordings are included with this records release under the report numbers associated with interviews of the individual officers and review of the related recordings, rather than under the acquisition report numbers **17-1342/1** and **17-1342/7**. The individual officers' names appear within the digital record link name in the links list available with this records release.

The DCI case file documents receipt of numerous other squad video recordings related to this incident, as noted within acquisition reports and/or in individual reports documenting DCI's review of these recordings. The video recordings identified by DCI investigators during review as containing the best coverage of the incident are included with the records being produced for this public records release as described above with minimal redactions made for reasons set forth elsewhere in this letter. However, the squad video recordings documented in reports numbered **17-1342/48**, **17-1342/50**, and **17-1342/71**, which were reviewed as documented within those reports or within reports documenting interviews of the listed officers, have not been produced for release at this time. Most of the video in these recordings does not capture the incident, due to the angle of the recording; the remaining video and the audio content in these recordings is substantially duplicative of the squad camera and body camera video recordings that are included in this release. Producing copies of the additional squad video recordings listed in reports **17-1342/48**, **17-1342/50**, and **17-1342/71**, with necessary redactions completed, would take a considerable amount of staff time. Again, 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. Therefore, I determined that the public interest is satisfied by release of the related reports, which document the contents of these additional squad video recordings, and by the release of the video recordings being produced, which more effectively capture this incident.

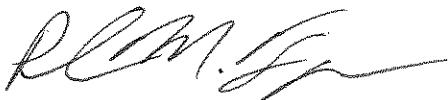
Only one copy of records for which duplicate copies exist has been included with the records prepared for release. *Stone v. Bd. of Regents*, 2007 WI App 223, ¶ 20, 305 Wis. 2d 679, 741 N.W.2d 774.

Copies of a search warrant and related court records pertaining to Mr. Hall's truck have been redacted from the records prepared for release at this time because those records remain sealed by the court. *See* Wis. Stat. § 19.35(1)(a) ("*Except as otherwise provided by law*, any requester has a right to inspect any record." (Emphasis added.)). Once the seal pertaining to that search warrant has expired or been lifted by the court, those records will be made available as a supplemental release.

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

PMF:kas