



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

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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 file for DCI's investigation into the March 22, 2017 shootings by Everest Metropolitan Police Department Detective Sergeant Daniel Goff and Marathon County Sheriff's Department Deputy Matthew Bell, resulting in the death of Nengmy Vang, was prepared for release.

The DCI case in question is **17-1860: Marathon County OID – Nengmy Vang**. 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.

DOJ Assistant Attorney General Roy Korte handled the prosecutorial review of this investigation, and a statement summarizing his decision has also been made available by DOJ online. The remainder of the DOJ prosecutor's file is not being released because it consists of attorney work product, which is a statutory and common-law exception to disclosure and because the common law recognizes that the prosecutor's file is exempt from disclosure under the public records law. *See* Wis. Stat. § 19.35(1)(a); *see also Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27-28, 305 Wis. 2d 582, 740 N.W.2d 177 (“The common law long has recognized the privileged status of attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation.”); Wis. Stat. § 804.01(2)(c)1; *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991); *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 888 N.W.2d 584.

Certain information has been redacted from the investigative records prior to release, 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).

On March 22, 2017, prior to the officer-involved shooting incident that resulted in his own death, Nengmy Vang shot and killed four people: Dianne Look and Karen Barclay at the Marathon Savings Bank in Rothschild, Sara Quirt Sann at her law office in Schofield, and Everest Metro Police Detective Jason Weiland on Aspen Street in Weston.

The names of these four victims have been widely publicized, and they have not been redacted from the DCI case file as prepared for release. However, other identifying information for these four victims and their families has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. 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). Other well-established public policy also 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). 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. This public policy was recently echoed by the Wisconsin Supreme Court in *Democratic Party of Wisconsin*, 372 Wis. 2d 460, ¶ 28 (“Wisconsin’s constitutional commitment to the fair treatment of victims and their privacy rights, together with this court’s commitment to minimizing victims’ suffering, weigh in favor of nondisclosure.”).

In preparing these records for release, and in addition to the other more specific reasons detailed later in this letter, I applied the Wis. Stat. § 19.35(1)(a) public records balancing test and determined that the public interest in treating the surviving loved ones of these four homicide victims with respect for their privacy and dignity outweighed any legitimate interest in public disclosure of the following information:

- Names and other personally identifying information for the spouses and children of the four homicide victims. We are specifically aware that following the tragic murders, some family members of the deceased victims were contacted and approached by local and national media outlets, causing additional distress. Home addresses, personal telephone numbers, signatures, and other personal information for these family members have been redacted.
- Descriptions of family members’ distress as events unfolded, and the names of family and friends who visited Detective Weiland’s hospital room.
- Medical information regarding the victims and their family members.
- Graphic descriptions of the injuries to the four homicide victims. These individuals were not involved in the officer-involved shooting incident except as victims, and

their dignity and the privacy of their families outweighs any public interest in such details.

- Graphic images of the shooting scenes taken at the Marathon Savings Bank, at the Tlusty, Kennedy and Dirks Law Office, and at the Aspen Street site.
- Graphic images of the four homicide victims taken at the scenes, at the hospitals where they were taken for treatment, and during their subsequent autopsies.
- Autopsy reports and related records for the four homicide victims.

The following individuals who witnessed these four homicides and the unfolding active shooter incident are also victims in this case, and certain information has been redacted from the records being released to respect their privacy and dignity:

- Names, ages, home addresses, personal telephone numbers, job descriptions, vehicle descriptions, signatures, handwritten statements, and other personally identifying information of law firm employees who were present when Ms. Quirt Sann was killed have been redacted. Graphic descriptions of efforts by law firm employees to provide assistance to their wounded colleague, which have no bearing on their recounting of the chronological events they witnessed, have been redacted. Video recordings of interviews with the law firm employees are not being released. The law firm employees present during the active shooter situation were themselves crime victims and must be afforded the privacy and dignity protected by the Wisconsin Constitution and statutes. Release of their names and other personally identifying information in relation to the descriptions of the events that occurred at the law firm will needlessly re-victimize them.
- For the residents of the Aspen Street home outside which Detective Weiland was killed, the driver of a Schwan's truck who was caught in the line of fire on Aspen Street and evacuated by law enforcement, the Subway employees and customers who were barricaded with Mr. Vang's wife during the initial incident at the bank, and the residents of the Aspen Street apartments who were evacuated during the stand-off between law enforcement officers and Mr. Vang, their names have been redacted in full, along with their ages, home addresses, personal telephone numbers, vehicle descriptions, signatures, and other personally identifying information. Specific employment information regarding these victim witnesses has been redacted only where it would identify the individual employee, but not where it is relevant to explain their presence during the incidents. I find that the public interest in transparency of governmental affairs and official acts of governmental officers and employees is satisfied by disclosure of de-identified records that disclose, in detail, the criminal events that preceded the officer-involved death.
- For the Everest Metro police officer who responded to the Aspen Street scene with Detective Weiland, was present when he was shot, and was evacuated along with him once that could be accomplished safely, her name is reduced to initials only, and her image has been redacted or blurred within the digital records being released.

She was directly in the line of fire with Detective Weiland when he was killed and she was stranded near the vehicle they shared in the immediate aftermath of the shooting. She is a crime victim and must be afforded the privacy and dignity protected by the Wisconsin Constitution and statutes. Release of her name in relation to the descriptions of the events that occurred will needlessly re-victimize her.

- Audio recordings of 911 calls placed by these witnesses are not being released because they would necessarily identify crime victims. Transcripts of these calls prepared for the case file remain included with the release, with minimal redactions made for reasons explained elsewhere in this letter.

Even in those situations in which a criminal prosecution does not occur, it is the policy of our office to consider the privacy rights of those who could be considered victims entitled to these protections when applying the balancing test regarding the release of investigative records. I concluded the public interest favoring protection of victims from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in the disclosure of the types of information listed above.

Again, considering the well-established public policy described above, recognizing the privacy rights of a deceased person's surviving loved ones, I also determined that the public interest in treating the surviving loved ones of Nengmy Vang with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of certain records. *Cf. Favish*, 541 U.S. at 168, 171-72. Accordingly, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the following types of records and information regarding the Vang family have been redacted:

- Names and ages of the Vang children, including adult children and their spouses, have been redacted in full. Naly Vang has been named in media accounts, including an interview, and therefore, her name is not redacted from the DCI records. The names of other Vang family members are reduced to initials only, or to first initial and last name where the surname is Vang. Home addresses, personal telephone numbers, employment information, vehicle information, signatures, and other personal identifying information, including social security numbers and passport images/numbers, also have been redacted for these individuals.
- Video and audio recordings of interviews with the Vang children have been redacted. Related reports that document the statements provided by the Vang children during interviews also have been redacted in full. Any information provided by these children which was deemed of interest to the investigation was also provided by other sources, and the remainder of the information provided by the Vang children was personal family information. An account number for the Child Advocacy Center related to interviews with the Vang children has also been redacted.
- The Vang divorce file maintained by Naly Vang's attorney, one of the homicide victims in this case, which was obtained from her office pursuant to a search warrant, is not being released. Also excluded from the release are records related to

an appraisal of assets conducted in connection with the Vangs' divorce proceedings. These files contain information subject to attorney-client privilege, attorney work product, and confidential financial information that is not subject to public disclosure. *See Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-83, 546 N.W.2d 143 (1996); *Seifert*, 305 Wis. 2d 582, ¶ 28; Wis. Stat. § 905.03; Wis. Stat. § 804.01(2)(c)1.

- Private financial information related to the Vang family, including insurance, tax, and wage information as well as a safe deposit box number and financial details related to assets evaluated in connection with the Vangs' divorce proceedings, has been redacted pursuant to the balancing test. I determined that the public interest in maintaining confidentiality of individual tax records outweighs the public interest in disclosing this information, and is consistent with the legislative policy expressed in Wis. Stat. §§ 19.36(13) and 71.78(1). In addition, these types of personal financial records are redacted pursuant to Wis. Stat. §§ 767.127(3)(a) and 767.54.
- Medical information regarding Vang family members has been redacted. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. § 146.82. Although 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 medical information outweighs any public interest in disclosure of this information.
- The contents of Naly Vang's cellular phone and the pass code for her cellular phone, which Ms. Vang provided upon request, have been redacted from the records being released. I find that the public interest in obtaining cooperation in an investigation by crime victims and key witnesses outweighs the public interest in disclosing the personal contents of victims' and witnesses' cellular phones.
- Copies of the contents of a personal notebook belonging to Naly Vang have been redacted from the records prior to release, along with references revealing the contents where documented within DCI reports. Some of these notes were recorded at the behest of Naly Vang's attorney and therefore are privileged communications not subject to release. Other contents consisted of Naly Vang's personal thoughts. I find that the public interest in obtaining cooperation in an investigation by crime victims and key witnesses outweighs the public interest in disclosing the personal contents of victims' and witnesses' personal notes and diary entries.
- Descriptions of Vang family members' distress as events unfolded have been redacted, as well as personal information related to the visits of family members to Mr. Vang in the hospital, and other personal family information that, if disclosed publicly, could subject Naly Vang and her children, many of whom are adolescents, to severe emotional distress. In addition to the victims' rights provisions in the Wisconsin Constitution and statutes, I find that the public interest in maintaining privacy during the death of a family member, and the public interest in law

enforcement gaining access to victims and witnesses during such times, outweighs the public interest in disclosing intimate family details.

- Audio recordings of 911 calls placed by Naly Vang are not being released. Transcripts of these calls prepared for the case file remain included with the release, with minimal redactions made for reasons explained elsewhere in this letter. I find that the public interest in government transparency is satisfied by the release of transcripts of the 911 call, and that the public policy of protecting crime victims from re-victimization that could occur if 911 audio was released outweighs the public interest in disclosure of the audio.
- Graphic images of Nengmy Vang’s body at the hospital and during his subsequent autopsy have been redacted from the release. In considering whether to release this information, I weighed the existence of any reasonable public interest in disclosure of this information against the privacy rights of the surviving family members. *Cf. Favis*, 541 U.S. at 168, 171-72 (applying federal Freedom of Information Act to release of death scene photos, reasoning that invasion of family privacy 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). Common law recognizes “well-established cultural tradition acknowledging a family’s control over the body and death images of the deceased.” *Id.* at 168.

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.

In addition, I 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 individuals who were interviewed or mentioned during interviews. Generally, the initials for the names of these individuals were not redacted. However, names of juveniles mentioned by witnesses were redacted in full, as were the names of individuals mentioned in radio dispatch or other records who were

wholly unrelated to DCI's investigation. The names of a small number of witnesses who were also victims have been redacted in full for the reasons set forth above.

- Other information that would identify the above individuals, such as home addresses, personal telephone numbers, employment information, vehicle information, signatures, and other personal identifying information.
- Digital images of witnesses, including juveniles.

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, social security numbers, and passport 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, social security numbers, or passport numbers of individual persons.

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

Home addresses, home telephone numbers, personal cellular telephone numbers, and personal electronic mail addresses 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. § 19.31; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

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

Pursuant to the federal Driver's Privacy Protection Act (DPPA), which prohibits release of personal information and highly restricted personal information in response to a public records request, personal information, as defined in DPPA, contained within the DCI records that was obtained from the Wisconsin Department of Transportation (DOT) Division of Motor Vehicles (DMV) database has been redacted. *See* 18 U.S.C. § 2721 et seq.; *New Richmond News v. City of New Richmond*, 2016 WI App 43, 370 Wis.2d 75, 881 N.W.2d 339.

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, non-public cellular telephone numbers for Marathon Savings Bank, Schwan, Security Realty, Primerica and Women's Community employees have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general numbers for these businesses are publicly available. I determined that the public interest in these individuals performing their job responsibilities without disruption and unnecessary interruption if their direct cellular phone numbers became public knowledge, and in facilitating citizen cooperation with law enforcement investigations, outweighs any public interest in disclosure of the non-public cellular phone numbers for these individuals. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

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

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, certain redactions have been made in relation to the Facebook account of one of the witnesses interviewed in this matter. Account identifiers, an image of the witness's Facebook page, and videos the witness shared via his private Facebook account have been redacted in deference to the privacy interests of the persons to whom these records pertain, including the witness's minor child in the home. The redacted video content was reviewed as documented in report *17-1860/224* and was not found to contain any unique views of the incident pertinent to DCI's investigation. 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. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Specific information and images that expose security arrangements at the Marathon Savings Bank and the Tlusty, Kennedy and Dirks Law Office have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, as have images that contain confidential banking or legal information of customers and clients. I determined that the public interest in protecting the security of these businesses, the people who work there, and their customers outweighs any public interest in detailed information regarding these businesses' security systems. Bank security camera footage that is duplicative is not being released at this time. Security camera footage depicting the crime victims has been redacted, as have detailed descriptions of the victims following the incident. The victims' families are entitled to privacy and dignity in the memory of their loved ones. I believe that releasing detailed descriptions of the victims' bodies likely would cause further suffering for their surviving family members. Under the circumstances of this case, causing such unnecessary suffering is not warranted where no beneficial public purpose could be served by release of further information about the condition of the victims' bodies. Therefore, I determined that the public interest in treating the victims and their surviving loved ones with respect for their dignity and privacy outweighs any legitimate interest in public disclosure of this information

The street address for an office where DCI agents work at a confidential location shared by undercover agents has 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 this location, so that undercover agents can effectively investigate criminal activity, outweighs any public interest in disclosure of this confidential street address. Wis. Stat. § 19.35(1); *Linzmeier*, 254 Wis. 2d 306, ¶ 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 shooting incident on March 22, 2017 have not been redacted from the records.

Firearms trace reports provided confidentially to DOJ by the federal Bureau of Alcohol, Tobacco, and Firearms ("ATF") have been redacted from the DCI case file where present within report number *17-1860/85*. 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 these reports to DOJ without DOJ's acceptance of those conditions. ATF authorized DOJ to disclose the substantive information from the firearms trace reports as included in the narrative portion of case report *17-1860/85*. 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 these reports 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 these reports 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 reports to DOJ, outweighs any public interest in disclosure by DCI of the ATF firearms trace reports themselves. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Crime Laboratory records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2), with the exception of Crime Laboratory records documenting Crime Scene Response Team (CSRT) activity at the three scenes, which are exempt from the statutory restrictions governing release of Crime Laboratory 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 Laboratory and the results of those analyses also has been redacted from the records prior to release.

Pursuant to Wis. Stat. § 19.36(8), I redacted the name of an individual who cooperated with this law enforcement investigation in a confidential capacity, along with other information that would identify this individual.

Emergency medical services (EMS) personnel from numerous agencies responded to the three shooting scenes on March 22, 2017 to provide medical care for Ms. Look, Ms. Barclay, Ms. Quirt Sann, Detective Weiland, and Mr. Vang. Specific information regarding their assessment and treatment of these five individuals, as observed or reported by the EMS personnel or other witnesses, has been redacted from the records in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c). To the extent the information is not directly governed by Wis. Stat. §§ 256.15(12) and 146.82(5)(c), in applying the Wis. Stat. § 19.35(1)(a) balancing test I find that the same underlying public policy of protecting the confidentiality and privacy of personal medical 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 this information. Where copies of reports prepared by EMS personnel are contained within the DCI case file, they 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 addition, specific information regarding life-saving attempts for these individuals provided by law enforcement, as reported by those who provided the treatment to the responding emergency medical services personnel, 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. 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.

Patient health care information discussed within radio dispatch audio recordings that pertains to emergency calls unrelated to the officer-involved shooting incident, which is not directly governed by Wis. Stat. §§ 146.81 and 146.82, 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 this information.

DCI report number **17-1860/392** documents DOJ's receipt of the autopsy records for Nengmy Vang. Mr. Vang's autopsy was conducted by the Milwaukee County Medical Examiner's Office and provided to DOJ by the Marathon County Medical Examiner's Office. The DCI report documenting receipt of these records is included with the release; however, the records attached to that report, which were provided by the medical examiner's offices, have been wholly redacted from the release. Those records were provided to DOJ on the condition that the reports would not be shared with any person outside the criminal investigation, and the medical examiner's offices 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 records were provided to DOJ and in cooperating with the medical examiner's offices 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 Milwaukee County and Marathon County Medical Examiner's Offices. 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 medical examiner's offices provided their records to DOJ, outweighs any public interest in disclosure by DOJ of the autopsy records provided by the medical examiners. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, medical examiner's records may be requested directly from the records custodian at the medical examiner's office.

As documented in the DCI case file, squad video recordings and body camera recordings from the officers involved at the homicide scenes and the scene of the officer-involved shooting were collected by DCI for review. Due to space constraints, the very large investigatory file, and the time necessary to review this material, duplicative video and video that does not depict scenes of investigatory interest are not included in this release. DCI's review of these recordings is documented in individual reports within the DCI case file. You may request additional materials by specifying what you seek by report number. Any such requests should be made through DOJ's ordinary public records request process and will be processed accordingly.

In addition, due to the volume of digital records associated with this investigation, the following general categories of digital records have not been included with the DCI investigative records prepared for website release at this time:

- photograph and video images taken at two of the homicide scenes in this case, at the Marathon Savings Bank and the Tlusty, Kennedy and Dirks Law Office

- audio recordings of interviews with officers (where interviews were recorded)

With regard to any release of scene photographs and video recordings taken at the Marathon Savings Bank and Trusty, Kennedy and Dirks Law Office crime scenes, I considered that these are separate homicide scenes, not directly connected with the investigation of the officer-involved shooting incident. A small number of pertinent images from each of these locations are included with the scene reports in DCI's investigative file. Interviews with all officers are summarized in detail within the related DCI case reports.

Should you wish to request copies of any of these additional categories of records, you may request them by specifying what you seek by report number. Again, any such requests should be made through DOJ's ordinary public records request process and will be processed accordingly. Please note that not all the records within the general categories listed above may be subject to public records release.

Pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test, witnesses' voices were redacted from personal video recordings they provided to investigators to protect their identities. In addition, some of the content within these personal citizen video recordings was blurred prior to release for reasons set forth elsewhere in this letter.

Where possible, 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. However, essentially duplicative records remain in several spots, for clarity where they are referenced within the attached report.

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