



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 case file for DCI's investigation into the March 28, 2017 death of Dillon M. Galien has been prepared for release.

The DCI case in question is *17-1967: Mishicot OID – Dillon M. Galien*. 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 acts of public officers and employees in their official capacities. *Building and Constr. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

Well-established public policy recognizes the privacy rights of a deceased person's surviving loved ones. *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004). In preparing these records for release, I applied the Wis. Stat. § 19.35(1)(a) public records balancing test and determined that the public interest in treating surviving loved ones of the deceased with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following information:

- Graphic images of Shawn Galien taken at the hospital
- Autopsy photos of Mr. Galien
- The current and prior addresses of Mr. Galien
- The name of Mr. Galien's girlfriend has been redacted to its initials

In performing the balancing test, I determined that the public interest in protecting the privacy of his family 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 preparing these records for release, I also determined by application of the public records balancing test that the public interest in protecting the ability of law enforcement to gather information when conducting sensitive investigations and in protecting the privacy of citizens involved in those investigations outweighs any legitimate public interest in disclosure of information that could identify witnesses and other individuals referenced by witnesses. *Cf. Wis. Stat. § 19.31; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of officer-involved shooting incidents, public disclosure of the full names and other identifying information for individuals interviewed or mentioned during interviews could expose these individuals to unwanted public scrutiny, criticism, or pressure from outside sources, which could have a chilling effect on future witnesses' willingness to come forward and cooperate with law enforcement in investigations of similar incidents. Accordingly, the following information has been redacted from the records prepared for release:

- Names of adult witnesses, family members, and others mentioned by individuals interviewed.

Initials for the names of these individuals have been left unredacted. In the case of family members, if the last name is the same as Mr. Galien, only the first name was redacted to the initial and the last name remains intact. If the last name is different, the first and last names are redacted to the initials.

The names of law enforcement officers mentioned in the records are not redacted.

- Other information that would identify the above individuals.

Dates of birth, home addresses, driver's license numbers, home and personal cell telephone numbers, handwritten signatures, and places and/or hours of work for these individuals have been redacted.

- The names of juveniles have been redacted in their entirety.
- Portions of audio recordings of police dispatch communications and the 911 call, and video recordings of interviews and body camera footage that could identify subjects, or other confidential information, including names, addresses, and telephone numbers.

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 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 outweigh any public interest in disclosure of this 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 this information.

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.

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.

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.

DCI report number *17-1967/8* documents DOJ's observation of the autopsy of Mr. Galien, conducted at the Milwaukee County Medical Examiner's Office. The DCI report has been included with the released records; however, the subsequently provided Medical Examiner's report and any information obtained from that report is not included with the released records, pursuant to the balancing test. Such reports are provided on the condition

that those reports and the information contained therein will not be shared with any person outside the criminal investigation, and the Milwaukee County Medical Examiner's Office would not provide the information and 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 are 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 or the information contained therein would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Milwaukee 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 Milwaukee County Medical Examiner's Office provide their findings to DOJ, outweighs any public interest in disclosure by DOJ of that information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

DCI case report *17-1967/9* documents receipt by DCI of a video surveillance recording obtained from the Fox Hills Resort. DCI case report *17-1967/25* documents DCI's review of this recording. The video is approximately four hours in length and captures both a forward-facing view (out the front lobby window) and an overhead desk view. A copy of the portion of these recordings that captures the interactions between law enforcement and Mr. Galien has been prepared for public release and is included with the other digital records being made available at this time. If you wish to obtain access to the remainder of the video, please contact me.

EMT personnel working with the Mishicot Area Ambulance Service responded to the scene to provide medical care for Mr. Galien. Excerpts from DCI records that document patient assessment and treatment information provided by responding EMT personnel, as well as the EMS reports and records, have been redacted in accordance with Wis. Stat. §§ 256.15(12) and 146.82(5)(c).

An image of a prescription bottle and a description of the prescription, identified in report *17-1967/9*, have not been provided pursuant to Wis. Stat. § 146.82(5)(c). In addition, notwithstanding Wis. Stat. § 146.82, I am not disclosing the image of the prescription, the prescription number, or the name of the party to whom the prescription was provided pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. § 146.82. Even if Wis. Stat. § 146.82 does not directly govern the medical information included in these records, I find that the same underlying public interest in protecting the confidentiality and privacy of personal medical information outweighs any public interest in disclosure of this information.

Wisconsin Department of Transportation (DOT) files, accessed through DOJ's Transaction Information for the Management of Enforcement (TIME) System, which are provided to law enforcement personnel only and require training and certification to access, have been redacted when contained in the investigative file in their original format, and

where the information contained within those records is provided within the investigative report. I concluded that disclosure of such information by DOJ would significantly impair future information sharing and other cooperative law enforcement efforts between DOJ and other government agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in ensuring law enforcement access to DOT records and in cooperating with other government and law enforcement agencies outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39; *see also* 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 Mr. Galien's driver's license have been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205.

I redacted a fingerprint impression pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Providing the fingerprint without redaction creates the potential for access to a unique bio-marker by others who could use this information in attempts to impersonate the subject of the record. In conducting the balancing test, I concluded that the public interest in protection against the illicit use of fingerprint records outweighs any public interest in disclosure of this information.

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

The law permits DOJ to impose fees for certain "actual, necessary and direct" costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying and mailing the requested records if the total amount exceeds \$5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees, and 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