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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 January 25, 2017 shooting by Jackson County Sheriff's Deputy Sergeant Evan Mazur and Deputies Michael Bartlett and Aaron Johnson, which resulted in the death of Donovan P. Scheurich, Sr., has been prepared for release.

The DCI case in question is **17-395: Jackson County OID – Scheurich**. 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](http://www.doj.state.wi.us/dci/officer-involved-critical-incident). Access to copies of related photographs, audio recordings and video recordings may be obtained by contacting DOJ Communications Director John Koremenos at [koremenosj@doj.state.wi.us](mailto:koremenosj@doj.state.wi.us).

Certain information has been redacted from the records, either because specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These redactions are described below. In addition, I have been mindful in preparing these records for release that the purpose of the Wisconsin public records law is to shed light on the workings of government and the official acts of public officers and employees. *Building and Constr. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

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

- Graphic photographs and video content showing Donovan Scheurich at the scene and photographs taken during his subsequent autopsy.
- The telephone number for the family cell phone being used by Mr. Scheurich, which is referenced in connection with his calls to 911 dispatchers during the incident.

- Prescription information for Mr. Scheurich's fiancée, visible in some photographs taken of the contents of the car driven by Mr. Scheurich at the time of the incident.

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. Regarding the medical information pertaining to Mr. Scheurich's fiancée, well-established public policy recognizes the confidentiality and privacy of personal medical information as expressed in Wis. Stat. §§ 148.81 and 146.82. Pursuant to the public records balancing test, 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.

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 were not redacted. (For family members of Mr. Scheurich who share the same surname, only their first names were reduced to initials.) The names of law enforcement officers and other public employees mentioned in the records have not been redacted.

- The name of one witness has been redacted in full from the audio recordings of telephone calls as documented in report number *17-395/13*. The initials for this witness's name are included within the written report.
- Other information that would identify the above individuals.

Dates of birth, home addresses, and home and personal cell telephone numbers for these individuals 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 outweigh 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 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 or driver's license numbers of individual persons.

Photographs of driver's licenses have been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205. Any reference to a state ID card has been redacted pursuant to Wis. Stat. § 343.50(8). *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.

Birthdates of public employees 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, 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.

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, the non-public direct telephone number for an emergency request analyst at Verizon has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. General numbers for Verizon are publicly available. I determined that the public interest in Verizon emergency analysts performing their job responsibilities without disruption and unnecessary interruption if their direct telephone numbers became public knowledge, and in facilitating citizen cooperation with law enforcement investigations, outweighs any public interest in disclosure of the non-public direct telephone number for this analyst. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

The street address for the office of DCI agents who 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); *Linzmeyer*, 254 Wis. 2d 306, ¶ 41.

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

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, 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 July 22, 2015 shooting incident have not been redacted from the records.

Information containing specific details regarding 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.

The Black River Falls Emergency Medical Service (EMS) responded to the shooting scene to provide medical care for Mr. Scheurich. Specific information regarding their assessment and treatment of Mr. Scheurich, as observed or reported by the EMS personnel or other witnesses, including in the audio portion of video recordings captured by the body cameras of officers at the scene, 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. Even if 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 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.

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. Scheurich. A summary of the autopsy and toxicology results provided by the pathologist is included within the narrative of DCI report *17-395/37*, and a copy of the referenced reports are also included in the records prepared for release to you. However, portions of Mr. Scheurich'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. Scheurich'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. Scheurich's private medical information and privacy of his surviving loved ones outweighs any public interest in disclosure of these portions of the report.

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.

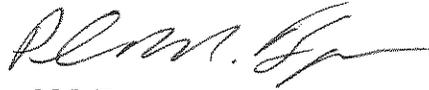
There are a small number of records in DCI case file *17-395* which cannot be disclosed publicly at this time because they are restricted in connection with sealed search

warrants. Accordingly, you will note that reports numbered *17-395/26, 27, 35, 36, 39 and 40*, are not included within the case file copy as currently available for release. Once these seals expire, these reports, along with the related search warrant records, will be included in a supplemental release of records related to this investigation.

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,



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Office of Open Government

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