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To Whom This May Concern:

On March 14, 2017, in response to public records requests received by the Wisconsin Department of Justice (DOJ) regarding 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., a copy of the related DOJ Division of Criminal Investigation (DCI) investigative case file, **17-395: Jackson County OID - Scheurich**, as of that date, was made available on DOJ's website at www.doj.state.wi.us/dci/officer-involved-critical-incident. Numerous photographs, audio recordings, and video recordings related to the investigation were also made available at that time.

As noted in my letter, dated March 14, 2017, explaining redactions made from the initial release of records related to this investigation, a small number of records in DCI case file **17-395** could not be included with the records released at that time because they were restricted in connection with sealed search warrants. Those search warrants have now been unsealed, allowing those restricted records to be made public at this time. Accordingly, you will note that reports numbered **17-395/26, 27, 35, 36, 39, and 40**, which were not included with the initial website record post, have now been made available as part of a supplemental release of remaining records related to this investigation.

In addition, a small number of new reports have been added to the DCI case file since the March 14, 2017 records release, before the DCI case file was formally closed. Those additional reports have also been prepared for public release and are included with the supplemental record release now available at the DOJ website address shown above.

Certain information has been redacted from the additional records now available, 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 remaining 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 records:

- Full names, home addresses, and personal telephone numbers of family members.
- The telephone number for the family cell phone used by Mr. Scheurich on the date of his death.
- Facebook records for Mr. Scheurich obtained via search warrant in connection with this investigation. The information of interest identified by DCI during its review of these records is documented in case report *17-395/35*, and copies of three pages from among the Facebook records that contain the content of interest have been included in the records that follow that report. The remaining Facebook pages, which were not of interest in DCI's investigation, consist primarily of personal family photographs and exchanges that would require redaction prior to public release.
- Personal text messages and family photographs included in cell phone records for Mr. Scheurich, obtained via search warrant as documented in case report *17-395/36*. The majority of the cell phone analysis report is included with this supplemental record release; however, a small number of personal exchanges that far pre-date this incident and were not of interest in DCI's investigation have been redacted.

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 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 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.

- 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 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.

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.

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, 881 N.W.2d 339.

Crime Lab records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2), with the exception of Crime Lab records documenting Crime Scene Response Team (CSRT) activity, 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 and other records 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.

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 *17-395/43*, 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 public interest in disclosure of this information against the public interest in 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.

Individual account numbers and a passcode for Internet provider accounts have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in protecting the confidentiality of this economically valuable individually

identifiable information outweighs any public interest in disclosure of these individual account numbers and the related passcode.

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

The law permits DOJ to impose fees for certain “actual, necessary and direct” costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying and mailing the requested records if the total amount exceeds \$5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees, and therefore the records are being made available online at this time without any payment required.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read "P.M. Ferguson", written in a cursive style.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

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