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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 August 13, 2017 shooting by La Crosse Police Department Officers Andrew Adey and Stephen Hughes, which resulted in the death of Roger Burzinski, has been prepared for release.

The DCI case in question is **17-5600: La Crosse PD OID**. 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).

On August 13, 2017, prior to the officer-involved shooting incident that resulted in his own death, Roger Burzinski approached a family in a La Crosse park, stole their vehicle, and drove off in their vehicle with their one-year-old child still inside. Following a brief pursuit of the vehicle by police, Mr. Burzinski crashed into a parked vehicle. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the names of all four members of this victim family have been redacted in full from the released records, along with other personally identifying information such as their dates of birth, home address, telephone number(s), and vehicle license plate number. The same has been done for the owner of the parked vehicle, who was also a victim in this incident. 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 these victims with respect for their privacy and dignity also outweighed the public interest in disclosure of the following information:

- Images of the kidnapped child and her parents in photos and video at the scene.
- Descriptions or recordings that reveal the distress of the family of the kidnapped child during the incident, including the 911 call placed by the child's mother, and audio content capturing the voice of the child's father when being reunited with the child by officers at the scene.
- Images of personal papers visible within the stolen vehicle.

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; *see also Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 28, 372 Wis. 2d 460, 888 N.W.2d 584 ("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.").

Well-established public policy recognizes the privacy rights of a deceased person's surviving loved ones. *Cf. Favish*, 541 U.S. at 168, 171-72. 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 Mr. Burzinski's surviving loved ones with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following records:

- Graphic photographs of Roger Burzinski at the scene, at the hospital following transport to that facility, and during his subsequent autopsy.
- Graphic images taken at the shooting scene in the 1000 block of Eighth Avenue.
- Certain specific information regarding Mr. Burzinski's relationships with his family, provided by family members during interviews, has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In addition to the reasoning set forth above, and the general victims' rights provisions in the Wisconsin Constitution and statutes, I find that the public interest in maintaining family privacy following the death of a family member, and the public interest in law enforcement gaining access to family members during such times, outweighs the public interest in disclosing intimate family details.

- The signature of Mr. Burzinski's wife, located on a receipt she signed when accepting victim rights information from DCI, has been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure.

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, family members, and others mentioned by individuals interviewed. (Initials for the names of these individuals were not redacted.)
- Other information that would identify the above individuals, including dates of birth, home addresses, home and personal cellular telephone numbers, vehicle license plate numbers, employment information, and medical information.
- Names and addresses captured by radio dispatch for calls unrelated to this incident have been redacted in full from reports and audio recordings in this case file.
- Digital recordings of witnesses' voices, images and the interior of their homes captured in personal video footage provided to DCI during witness interviews.

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

Home addresses and personal phone 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.* 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, 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, the non-public cell phone numbers for security personnel at the Gunderson Lutheran Medical Center hospital in La Crosse have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The general number for the hospital is publicly available. I determined that the public interest in these individuals performing their job responsibilities without disruption and unnecessary interruption if their direct cell phone numbers became public knowledge, and in facilitating citizen cooperation with law enforcement investigations, outweighs any public interest in disclosure of the non-public cell phone numbers for these individuals. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

Any reference to a state ID card has been redacted pursuant to Wis. Stat. § 343.50(8).

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

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 scene, which are exempt from the statutory restrictions governing release of Crime Laboratory analysis documentation.

Emergency medical services (EMS) personnel responded to the shooting scene to provide medical care for Mr. Burzinski. Specific information revealing assessment and treatment of Mr. Burzinski by EMS personnel, including within squad video and witness video recordings, 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. Incidental observations regarding the activity of EMS personnel, as reported by other witnesses at the scene, have not been redacted.

In addition, specific information regarding the life-saving attempts for Mr. Burzinski by law enforcement at the scene, prior to the arrival of EMS personnel, as reported by those providing the treatment and captured in a video taken by the fire department, 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. The contents of the redacted video are described in report 17-5600/43.

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 August 13, 2017 shooting incident have not been redacted from the records.

Audio content within the squad video recording for Officer Hughes that captures his side of a brief personal telephone call he placed to his wife following the incident also was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the privacy of this officer and his family. In performing the balancing test, I determined that the redacted audio content does not shed any light on the acts of public officers. *Cf. Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1988); *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶ 9 & n.4, 327 Wis. 2d 572, 786 N.W.2d 177 (Abrahamson, C.J., lead opinion); *Id.*, ¶ 148 & n.2 (Bradley, J., concurring); *Id.*, ¶ 173 & n.4 (Gableman, J., concurring). Therefore, in performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of employees and government officials and their families, as well as the public policies expressed in Wis. Stat. § 19.36(10)(a), outweigh any public interest in the purely personal information of this officer's conversation with his wife. Furthermore, I determined that the public interest in protecting the privacy of this officer's family outweighs any public interest in disclosure of the redacted audio content.

The street address for the 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.

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 process and will be processed accordingly.

Records provided to DCI by the Dane and LaCrosse County medical examiners' offices have not been included with the released records. Those records were provided to DOJ by the medical examiners' offices on the condition that their records would not be

shared with any person outside the criminal investigation, and the medical examiners' offices would not provide these records 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 examiners' records were provided to DOJ and in cooperating with the medical examiners' 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 Dane and LaCrosse County medical examiners' 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 examiners' offices provided the records to DOJ, outweighs any public interest in disclosure by DOJ of the records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, medical examiner's records related to this investigation may be requested directly from the LaCrosse County Medical Examiner's Office.

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,



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Office of Open Government

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