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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 21, 2017 shooting by Kewaunee County Sheriff's Deputy Jamie Tlachac, which resulted in the death of Tyler D. Whitmire, has been prepared for release.

The DCI case in question is **17-5762: Kewaunee County OID - Tyler D. Whitmire**. 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).

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.”).

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 the deceased with respect for their privacy and dignity outweighed any legitimate interest in public disclosure of the following information:

- Graphic images of Tyler Whitmire taken at the scene of the incident and graphic descriptions of his injuries.
- Autopsy photos of Mr. Whitmire.

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 Mr. Whitmire 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 Whitmire family have been redacted:

- Names of Mr. Whitmire’s juvenile family members have been redacted in full. Lilly Lucas Whitmire has been named in numerous media accounts, and therefore, her name is not redacted from the DCI records. The names of other Whitmire and Lucas family members are reduced to initials only, or to the first name initial and last name where the surname is Whitmire or Lucas. Home addresses, personal telephone numbers, employment information, vehicle information, and signatures also have been redacted for these individuals.
- An audio recording of a family interview has been redacted in full.

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:

- The name of the victim assaulted by Mr. Whitmire and her personally identifiable information, including home address, personal telephone number, vehicle description, signatures, and other personally identifiable information have been redacted. She herself is a crime victim and must be afforded the privacy and dignity protected by the Wisconsin Constitution and statutes. Release of her name and other personally identifiable information will needlessly re-victimize her.
- Names of individuals who were interviewed or mentioned during interviews. Generally, the initials for the names of these individuals were not redacted. 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, descriptions of the homes, personal telephone numbers, employment information, vehicle information, signatures, and other personally identifiable information.
- Audio/video recordings of witness interviews.
- Digital images of witnesses and their residences.
- Audio recordings of 911 calls placed by witnesses/victims are being released; however, the names of the callers are being redacted because that would necessarily identify those crime victims. Synopses of these calls prepared for the case file remain included with the release, with minimal redactions made for reasons explained elsewhere in this letter.

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 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 and driver's license numbers of individual persons.

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

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). I have also redacted information of a purely personal nature pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of law enforcement and protecting the privacy of these individuals outweighs any legitimate public interest in disclosure of this information.

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 numbers. 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.

Wisconsin Department of Transportation (DOT) files, accessed through the Wisconsin Department of Justice TIME System, which are provided to law enforcement personnel only and require training and certification to access, have been redacted 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 access to DOT files 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.

Specific information identifying routine shifts worked by law enforcement officers and emergency medical personnel (EMTs) has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the officers, EMTs, their families, and their homes. In performing the balancing test, I determined that the public interest in protecting the security of the officers, EMTs, their families, and their homes outweighs any public interest in information regarding their routine shifts. Details regarding the specific shifts worked by the officers and emergency medical personnel involved in the shooting incident on August 21, 2017 have not been redacted from the records.

Information containing specific details regarding equipment assigned to law enforcement personnel and specific verbal commands given to K-9 officers 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; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Crime Laboratory records have been redacted pursuant to Wis. Stat. § 165.79(1) and (2). 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.

Emergency medical services (EMS) personnel from the Luxemburg Rescue Squad provided medical care for Mr. Whitmire and the assault victim at the scene, and transported the assault victim to the hospital. Specific information regarding their assessment and treatment, 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). Additionally, specific information regarding the application of an Automated External Defibrillator (AED) to Mr. Whitmire and its report has also been redacted. 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.

In addition, specific information regarding life-saving attempts for Mr. Whitmire provided by law enforcement, as reported by those who provided the treatment as well as other witnesses, 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.

DCI report number *17-5762/13* document DOJ's receipt of the provisional autopsy findings for Mr. Whitmire. Mr. Whitmire's autopsy was conducted by the Fond du Lac County Medical Examiner's office. The DCI report documenting receipt of these records is included with the release; however, the records attached to these reports, which were provided by the medical examiner's office, 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 Fond du Lac 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 medical examiner's offices provided their records to DOJ, outweighs any public interest in disclosure of the autopsy records. *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 dash camera recordings from the scene where Mr. Whitmire was located were collected by DCI for review. Due to the time necessary to review and prepare this material, video that does not depict scenes of investigatory interest are not included in this release. DCI's review of these recordings is documented in an individual report within the DCI case file.

The contents of the assault victim's cellular phone have been redacted from the records being released pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The cellular phone was voluntarily provided to law enforcement, upon request, and I find that the public interest in obtaining cooperation from crime victims and key witnesses in an investigation and in respecting the privacy and dignity of crime victims as explained above outweighs the public interest in disclosing the personal contents of a victim's cellular phone.

DCI report number 17-5762/49, regarding the attempted forensic examination of Mr. Whitmire's cellular phone, has not been completed as of the date of the record release and is therefore not contained within the records being provided to you.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, documents wholly unrelated to the investigation which may have been incidentally contained within case information have not been provided, as they have no relationship to the investigation and provide no information related to the investigation. The public interest in treating the surviving loved ones of the deceased with respect for their privacy and dignity outweighed any legitimate interest in public disclosure of the documents. Additionally, the documents included the following:

- Education records and related information were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The Federal Educational Records Privacy Act (FERPA) allows certain education records to be released to law enforcement, but generally, it prohibits a federally funded educational institution from disclosing a student's educational records or a student's personally identifiable information contained in such records without the written consent of the student's parents or the student if over age 18. 20 U.S.C. §§ 1232g(b)(1) and 1232g(d). In the hands of an educational institution subject to FERPA, educational records would be confidential and could not be disclosed without the student's consent. Although FERPA does not directly apply to DOJ, it creates a statutory confidentiality interest reflecting a public interest in non-disclosure. Well-established public policy recognizing the confidentiality and privacy of student educational records and personally identifiable information contained in such records is expressed in FERPA. I find that the same underlying public policy of protecting the confidentiality and privacy of student educational records and personally identifiable information contained in such records outweighs any public interest in disclosure of this information.
- A Social Security card has 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), I concluded that the public interest in protecting the confidentiality of this economically valuable individually identifiable information outweighs any public interest in disclosure of the card.
- Medical history documents were 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. § 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.
- A birth certificate and marriage certificate have been redacted pursuant to the limitations of Wis. Stat. §§ 69.20 and 69.21, which permit only the state registrar of vital statistics and local registrars to provide copies of vital records and to disclose information from those records. To the extent that Wis. Stat. §§ 69.20 and 69.21 do

not directly apply, these documents have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these documents are purely personal and to protect the privacy of record subjects and their families. Well-established public policy recognizing the confidentiality and privacy of vital records is expressed in Wis. Stat. §§ 69.20 and 69.21. I find that the same underlying public policy of protecting the confidentiality and privacy of vital records and the public interest in the expectation of privacy on the part of individuals in their personal lives outweigh any public interest in disclosure of this information.

In performing the balancing test, I determined that the public interest in treating the surviving loved ones of the deceased with respect for their privacy and dignity and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of the described records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 38.

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,



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Office of Open Government

PMF:hpw