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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 October 22, 2017 shooting by Crandon Police Officer Ryan Wilson, which resulted in the death of Dexter Baxter, has been prepared for release.

The DCI case in question is *17-7369: Crandon OID – Dexter D.A. Baxter*. 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 John 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).

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 public interest in disclosure of the following records:

- Graphic photographs of Dexter Baxter at the scene following the shooting, at the hospital following transport to that facility for treatment, and during his autopsy.
- Audio recordings of moans and remarks made by Mr. Baxter after he was shot.
- Graphic images of bloody clothing worn by Mr. Baxter and taken into evidence.

- Names of family members interviewed or mentioned by others who were interviewed have been redacted to initials only, except where these individuals share the last name Baxter, in which case just their first names were redacted to the initial. Other information that would identify these family members, including dates of birth, ages, home addresses, personal telephone numbers, and employment information for these individuals, also were 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.

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. Wis. Stat. §§ 950.01 and 950.02(4)(a). 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.

In preparing these records for release, I determined by application of the Wis. Stat. § 19.35(1)(a) balancing test that these public policies requiring that crime victims be treated with respect for their privacy and dignity outweighed any public interest in disclosure of the names or other personally identifying information of the owners of the vehicle in which Mr. Baxter was travelling at the time he was stopped, who were not otherwise involved in this incident, and of the individual from whom Mr. Baxter stole a television earlier that evening, where references to these individuals are present within DCI case file records. Accordingly, the full names, dates of birth, ages, home addresses, license plate number, and VINs for these individuals have been fully redacted from the reports prior to release. In addition, images of identification cards belonging to the vehicle owner have been redacted where visible within photographs taken at the scene, and the voice of the vehicle owner has been redacted from audio recordings of radio traffic related to this officer-involved shooting incident to prevent identifying the vehicle owner. The name of the mother of the theft victim has also been redacted, to prevent identifying the victim.

In addition, a small number of photographs of Officer Ryan Wilson that were taken at the hospital and in his family’s home to document his injuries, but in which he is only partially clothed, have been redacted in full or in part to protect his privacy. All other such photographs remain included in the records as released. Audio content from Officer Wilson’s body camera that specifically reveals his discomfort, fear, and pain during the time he was being attacked by Mr. Baxter has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Release of the audio would revictimize him and adversely impact his preparation to return to his law enforcement duties. In applying the balancing test, I concluded the public interest in

respect for crime victims and in effective law enforcement outweighs any public interest in disclosure. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

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 public interest in disclosure of information that could identify witnesses and other individuals referenced by witnesses. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 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.)
- Full names of juveniles mentioned by witnesses, who were simply mentioned in the investigative reports and were of no relevance to DCI's investigation.
- Other information that would identify the above individuals, including dates of birth, ages, home addresses, personal telephone numbers, vehicle information, employment information, and signatures for these individuals, also were redacted.
- The passcode for an individual's cell phone, which was provided to officers in cooperation with the investigation, was redacted to protect the individual's privacy.
- Audio recordings of witness interviews, with the exception of the individual in the vehicle with Mr. Baxter.

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 outweighs any public interest in disclosure of this described information. *Cf.* *Linzmeier*, 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.

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.

Home addresses and personal telephone numbers for individuals 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; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

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.* *Linzmeier*, 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.

Bank account numbers and credit card numbers of individuals have been redacted pursuant to Wis. Stat. § 19.36(13). To the extent this information is not directly governed by Wis. Stat. § 19.36(13), these records have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of financial identifying information and the protection of economically valuable

information from misappropriation or misuse is expressed in Wis. Stat. § 19.36(13). I find that the same public interest in protecting financial identifying information from misappropriation or other misuse, protecting the confidentiality and privacy of financial information, and protecting the expectation of privacy on the part of individuals in their personal lives applies here. In applying the balancing test, I concluded that the public interest in protecting this information, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure.

FBI numbers or information indicating whether or not FBI numbers exist has been redacted pursuant to 28 C.F.R. §§ 20.21(c)(2) and 20.33, because disclosure of the existence or non-existence of FBI numbers impermissibly would indicate the existence or non-existence of federal criminal history.

Pursuant to Wis. Stat. § 19.36(8), I redacted the names of individuals cooperating with law enforcement investigations in a confidential capacity and other information that would identify such individuals.

Crime Laboratory records have been redacted pursuant to Wis. Stat. § 165.79(1). In accordance with Wis. Stat. § 165.79(1), 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.

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.

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. Similarly, references by one officer to the location of his home in comparison with the incident scene were redacted in the interest of his family's privacy. 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 or the location of the officer's residence. Details regarding the specific shifts worked by the officers involved in the October 22, 2017 shooting incident have not been redacted from the records.

Unsubstantiated references to alleged criminal activity by individuals tangentially mentioned by witnesses contacted during this investigation have been redacted. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I

determined that the public interest in respecting the privacy and dignity of these individuals by not releasing unverified statements regarding them, as well as the public policies underlying Wis. Stat. § 938.396, outweigh any public interest in disclosure of that unsubstantiated information.

Emergency medical services personnel working with Crandon Area Rescue Squad responded to the shooting scene to provide medical care for Mr. Baxter and for Officer Wilson. Specific information regarding their assessment and treatment of Mr. Baxter and Officer Wilson as observed or reported by the EMS personnel, including in the audio portion of 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.

In addition, specific information regarding the treatment of Mr. Baxter by law enforcement, as reported by those providing the treatment, 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 *17-7369/18* documents DOJ's receipt of the preliminary autopsy records for Mr. Baxter, included with records provided to DCI by the Oneida County Medical Examiner, who also covers Forest County. The DCI report documenting receipt of these records has been included with the released records, along with a report documenting the preliminary findings provided by Dr. Michael Stier at the UW Health pathology laboratory; however, the remaining attached records, provided by the medical examiner's office, have been wholly redacted from the release. Those records were provided to DOJ by the Oneida County Medical Examiner's Office on the condition that the records would not be shared with any person outside the criminal investigation, and the medical examiner's office would not provide the 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 examiner's records were 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 records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Oneida 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 Oneida County Medical Examiner's Office

provided the records to DOJ, outweighs any public interest in disclosure by DOJ of the medical examiner's records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, the medical examiner's records may be requested directly from the Oneida County Medical Examiner's Office records custodian.

As noted in DCI report number *17-7369/47*, cell telephones seized from the vehicle in which Mr. Baxter was travelling when he was stopped by law enforcement, as documented in DCI report number *17-7369/5*, remain under review at this time in connection with the possibility of drug-related charges against one or more individuals. No copies of records obtained from those cell telephones are included with this release, and in photographs of the scene being produced for release at this time, images that show content on the screens of these cell telephones have had that content redacted prior to release. Because the redacted content may be connected with an ongoing investigation, it has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811; *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 824-27, 429 N.W.2d 772 (Ct. App. 1988). Release of the records while an investigation may still be in progress could compromise the ability of law enforcement to gain cooperation from potential witnesses and jeopardize their ability to conduct additional or follow-up interviews or obtain accurate and truthful information in those interviews. This could have the unfortunate effect of interfering with the ongoing investigation as well as any potential criminal prosecutions. *See also Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 12, 372 Wis. 2d 460, 472, 888 N.W.2d 584, 590 ("investigations and data collected are not open for public viewing because disclosure of this information would be 'harmful to the orderly administration of justice'" (citation omitted)). Therefore, in performing the public records balancing test, I concluded that the strong public interest in effectively investigating and prosecuting criminal activity and in protecting the integrity of current investigations outweighs any public interest in disclosing the redacted information at this time. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 26, 30, 32, 39.

As documented in the DCI case file, squad video recordings and body camera recordings for Officer Wilson and two other officers who responded to the scene of the officer-involved shooting were collected by DCI for review. Due to 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. If you wish to request copies of any such recordings, you may do so at any time.

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,



Paul M. Ferguson
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Office of Open Government

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