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March 30, 2018

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 December 30, 2017, death of Steven P. Lettenberger, as a result of a self-inflicted gunshot wound inflicted in the presence of Town of Brookfield police officers, has been prepared for release. The Waukesha County District Attorney determined there is no basis to prosecute the law enforcement officers involved, and DCI is releasing its case file pursuant to Wis. Stat. § 175.47(5)(b).

The DCI case in question is *17-9096: Town of Brookfield PD Officer Involved Death*. 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 public interest in disclosure of the following records:

- Graphic photographs of Steven Lettenberger at the scene and during his subsequent autopsy.
- Graphic descriptions of Mr. Lettenberger's injuries.

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 these individuals where present within DCI case file records. Accordingly, the names, dates of birth, addresses, and license plate numbers for these individuals have been fully redacted from the reports prior to 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 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 critical 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 Mr. Lettenberger’s girlfriend, adult witnesses, family members, and others mentioned by interviewed individuals were redacted to initials. In instances where the family member shared the last name of Mr. Lettenberger, only the first names were redacted to initials.
- Full name of Mr. Lettenberger’s girlfriend’s juvenile child. Revealing the names of children who were simply mentioned in the investigative reports and were of no relevance to DCI’s investigation is not essential to understanding the information in the investigative file.
- Other information that would identify the above individuals, including dates of birth, home addresses, home and personal cellular telephone numbers, vehicle

information, employment information, and signatures for these individuals have been redacted.

- An audio recording of a family interview has been redacted in full.
- Audio/video recordings of witness interviews.
- Mr. Lettenberger's previous address and employer.

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. 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 social security 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 social security 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, 370 Wis. 2d 75, 881 N.W.2d 339.

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.

The specific 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.

Crime Information Bureau (CIB) criminal history records, which are provided to law enforcement personnel only, require certification to access, and are confidential and prohibit secondary dissemination, have been redacted. Disclosure of such information by DOJ in violation of the prohibition would preclude future information sharing and significantly impair other cooperative law enforcement efforts between DOJ and other law enforcement agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in access to CIB criminal history records and in cooperating with other law enforcement agencies outweighs any public interest in disclosure of this information. *Cf. Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

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.

I redacted medical information 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. Although 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 medical information outweighs any public interest in disclosure of this information. *See also John K. MacIver Inst. for Pub. Policy, Inc. v. Erpenbach*, 2014 WI App 49, ¶ 19 & n.4, 354 Wis. 2d 591, 849 N.W.2d 888 (observing that “[p]ersonal finance or health information” may be subject to redaction as “purely personal” in an email that otherwise is subject to disclosure).

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.

EMT personnel working with the Town of Brookfield Fire Department responded to the scene to provide medical care for Mr. Lettenberger. Specific information regarding their assessment of Mr. Lettenberger, as observed or reported by the EMT personnel or other witnesses, 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.

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 December 30, 2017 critical incident have not been redacted from the records.

The access code for Mr. Lettenberger's cell phone has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The code is personal to Mr. Lettenberger and his family, and releasing it could jeopardize the privacy of his surviving family members. In applying the balancing test, I determined that public policy requiring protection of the privacy and safety of surviving family members outweighs any public interest in disclosure of this information.

As documented in the DCI case file, Mr. Lettenberger's cell phone was analyzed by the HIDTA Investigative Support Center. DCI reviewed the records obtained from that analysis, and all records relevant to the investigation have been documented, thoroughly described, and quoted within individual reports in the DCI case file. The records themselves are not included in this release because they contain thousands of pages of data, which includes the telephone numbers of private individuals and personal photos of unidentifiable individuals. I determined that reviewing those records, and applying any necessary redactions would require a considerable amount of staff time and resources, would be unnecessarily burdensome, and would further delay the release of the investigatory file under Wis. Stat. § 175.47(5)(b). The public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired, and does not require expenditure of excessive amounts of time and resources to release public records. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530.

The contents of the cell phone belonging to Mr. Lettenberger's girlfriend have been redacted from the records being released pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The cellular telephone 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.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, personal information unrelated to the investigation obtained from the statement of the girlfriend has not been provided. In applying the balancing test, I determined the public interest in treating the surviving loved ones of the deceased with respect for their privacy and dignity outweighed any public interest in disclosure of the information.

As documented in the DCI case file, squad video recordings and body camera recordings from the officers involved at the scene of the officer-involved critical incident were collected by DCI for review. Due to space constraints, the very large investigatory file, and the time necessary to review and apply any necessary redactions to 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 individual reports within the DCI case file.

Specific information that reveals the quantity, location, and coverage angles of security cameras employed by businesses has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in protecting the security of these businesses and the people who work there outweighs any public interest in detailed information regarding these business' security systems. Information regarding the results of DCI's canvass for related surveillance video is documented in the reports.

DCI report number *17-9096 / 63* documents DOJ's receipt of the autopsy findings for Mr. Lettenberger. Mr. Lettenberger's autopsy was conducted by the Waukesha County Medical Examiner's office. The DCI report documenting receipt of these records is included with the release; however, the records attached to the report, 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 Waukesha 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.

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

PMF:hpw