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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 January 17, 2018, shooting by Racine Police Officers Chad Stillman and Peter Boeck, which resulted in the death of Donte D. Shannon, has been prepared for release. The Racine 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 *18-334: Racine 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. 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/video of Donte Shannon at the scene, hospital, morgue, and during his subsequent autopsy.
- Graphic descriptions of Mr. Shannon'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 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 names of adult witnesses, family members, Mr. Shannon’s father’s girlfriend, and others mentioned by interviewed individuals were redacted to initials. In instances where a family member shared the last name of Mr. Shannon, only the first names were redacted to initials.
- Names and number of juvenile children of interviewed witnesses were redacted in full. 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.
- The name of a juvenile witness has also been redacted in full.

- The names of Mr. Shannon's father and mother have not been redacted, as they have been widely reported in the media.
- Other information that would identify the above individuals, including dates of birth, home addresses and descriptions of those residences, home and personal cellular telephone numbers, vehicle information, employment information, and signatures for these individuals have been redacted. Additionally, photographs that depicted contents of a citizen's private garage have been redacted in full.
- Audio/video recordings of witness interviews.
- Mr. Shannon's current and previous address.

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.

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.

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.

DOT files and Probation and Parole files (P & P), accessed through the Wisconsin Department of Justice TIME System, which are available to law enforcement personnel only and require training and certification to access, have been redacted when contained in the investigative file in their original format, and where the information contained within those records is provided within the investigative report. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined that there is a public interest in honoring the conditions under which the records are provided to law enforcement and in cooperating with other government agencies so as to encourage current and future cooperative law enforcement efforts. To not honor the conditions by disclosing the records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and other government enforcement agencies. I concluded the public interest in ensuring law enforcement access to DOT and P & P records 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; *see also* 18 U.S.C. § 2721 et seq.; *see also New Richmond News*, 370 Wis. 2d 75.

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. 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 records are provided to law enforcement and in cooperating with other law enforcement agencies so as to encourage current and future joint law enforcement efforts. To not honor the conditions by disclosing the records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and other law enforcement agencies. 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 criminal history records are provided to law enforcement, outweighs any public interest in disclosure by DOJ of the records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

The exact address for the office of DCI agents who 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 safely and effectively investigate criminal activity outweighs any public interest in disclosure of this confidential address. Wis. Stat. § 19.35(1); *Linzmeyer*, 254 Wis. 2d 306, ¶ 41.

Specific details regarding SWAT and tactical team assignments for officers involved in this incident have been redacted to preserve the security and effectiveness of these law enforcement techniques. Additionally, information regarding specific investigative focuses and tactics of the members of the FBI Task Force has been redacted to preserve the security and effectiveness of these law enforcement activities. 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.

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.

FBI reports provided to DOJ in connection with the joint investigation of this matter have been wholly redacted. These FBI reports are the property of the FBI and were provided to DOJ on the condition that they remain the property of the FBI, are only loaned to DOJ, and may not be redistributed outside DOJ without express authorization by the FBI. The FBI would not have provided these 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 FBI provided the reports to DOJ and in cooperating with the FBI so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the reports would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the FBI. 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 FBI provided the reports to DOJ, outweighs any public interest in disclosure by DOJ of the FBI reports. *Cf. Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Pursuant to Wis. Stat. § 19.36(8), I redacted the names of individuals who cooperated with law enforcement investigations in a confidential capacity and other information that would identify such individuals. Under Wis. Stat. § 19.36(8)(a)1, an informant includes any individual who provides information to law enforcement and either requests confidentiality or is expressly or implicitly promised confidentiality. The authority to delete information related to the identities of the informants also includes the authority to delete any other information that would tend to identify an informant. *See* Wis. Stat. § 19.36(8)(b). Notwithstanding § 19.36(8)(b), I also redacted the informants' identities pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest in protecting the livelihoods and security of individuals who cooperate with law enforcement, protecting law enforcement sources, and encouraging citizens to cooperate with law enforcement investigators in providing information essential to investigating potential criminal behavior outweighs any public interest in releasing the redacted information. *Cf. Linzmeier*, 254 Wis. 2d 306, ¶ 40.

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 from the Racine Fire Department responded to the shooting scene to provide medical care for Mr. Shannon. Specific information regarding their assessment of Mr. Shannon, 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 and first responders 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 January 17, 2018 incident have not been redacted from the records.

Payroll numbers for Racine Police Department officers, which are analogous to social security numbers or other economically valuable individually identifiable information for these officers, 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 payroll numbers of individual law enforcement officers.

Law enforcement records regarding a juvenile and other juvenile offense information have been redacted pursuant to Wis. Stat. § 938.396. To the extent such records and information are not directly governed by Wis. Stat. § 938.396, the records and information have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. § 938.396. I find that the same underlying public policy of protecting the confidentiality and privacy of children and juveniles outweighs any public interest in

disclosure of the redacted information. *See* Wis. Stat. § 938.396 (“Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed” unless certain exceptions apply).

As documented in the case file, audio recordings of interviews of non-involved responding officers were generated during the investigation. DCI’s interviews of these individuals are documented in individual reports within the DCI case file. Additionally, squad video recordings from the officers responding to the scene of the officer-involved shooting and body camera recordings from the officers assigned to security at the hospital were collected by DCI for review. DCI’s review of these recordings is documented in individual reports within the DCI case file. Due to space constraints, the very large investigatory file, and the time necessary to review and redact this material, the audio recordings of the interviews of non-involved law enforcement personnel and video that does not depict scenes of investigatory interest are not included in this release. You may request additional materials by specifying what you are looking for by report number. This request should be made through ordinary public records channels and will be processed accordingly.

Specific information that reveals the quantity, location, and coverage angles of residential security cameras has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Video that did not capture the incident but identified the residence was removed, leaving only the audio portion of the recording, based upon concerns expressed by the resident for the safety of the resident’s family. I determined that the public interest in protecting the security of these residences and the people who live there, and in encouraging the cooperation of citizens with law enforcement, outweighs any public interest in detailed information regarding these residential security systems. Information regarding the results of DCI’s canvass for related surveillance video is documented in the DCI reports.

DCI report number *18-334/6* documents DOJ’s receipt of the preliminary autopsy findings for Mr. Shannon. Mr. Shannon’s autopsy was conducted by the Milwaukee 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 Milwaukee 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