



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

July 6, 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 May 11, 2018 shooting by Clark County Sheriff's Department Deputy Nicholas Klemm and Loyal Police Department Officer Jacob Schar, which resulted in the death of Kelly Abbott, has been prepared for release. The Clark County District Attorney determined there is no basis to prosecute the law enforcement officer involved, and DCI is releasing its case file pursuant to Wis. Stat. § 175.47(5)(b).

The DCI case in question is **18-3390: Granton OID – Kelly Abbott**. 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).

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 images taken during Mr. Abbott's subsequent autopsy.

- License plate number and VIN number of a family member's vehicle from crime scene photographs, reports, video, and dispatch audio.
- Mr. Abbott's voice from video/audio recordings.

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.

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:

- Names of adult witnesses, family members, and others mentioned by individuals interviewed or in police reports.

Initials for the names of these individuals were not redacted. The last name of family members was left unredacted if it was the same as the deceased individual's last name.

The names of law enforcement officers and other public employees mentioned in the records have not been redacted.

- Other information that would identify the above individuals.

Dates of birth, home addresses, home and personal cellular telephone numbers, employers, and employers' addresses for these individuals have been redacted. A license plate number unrelated to the case has also been redacted.

- Voices of unknown 911 callers and un-related 911 calls from another county in dispatch audio.

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, social security numbers, driver's license numbers (including those in photographs), and individual's signatures 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 this information.

Home addresses and home telephone numbers of public employees have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

Home addresses, home telephone numbers, personal cellular telephone numbers, and personal electronic mail addresses of citizens 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. Additionally, well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer's employees is expressed in Wis. Stat. § 19.36(10)(a). I find that the same underlying public policy of protecting the confidentiality and privacy of personal contact information outweighs any public interest in disclosure of this information.

Photographs of driver's licenses have been redacted pursuant to Wis. Stat. § 343.43(1)(f) and Wis. Admin. Code § Trans 102.205.

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; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Specific information identifying the 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 May 11, 2018 incident have not been redacted from the records.

Computer login ID codes for police department personnel have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect against unauthorized use following any subsequent disclosure. The disclosure of the login ID codes would allow unfettered public access to department systems and confidential content and would create a security risk to law enforcement officers, personnel, and department systems. In performing the balancing test, I determined that the public interest in protecting the security of the department's officers, personnel, and systems, in ensuring that government can operate safely and effectively, and in preventing confidential information from disclosure outweighs any public interest in the computer login ID codes. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41.

Crime Laboratory records have been redacted pursuant to Wis. Stat. § 165.79(1), 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. 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 responded to the shooting scene to provide medical care for Mr. Abbott. Specific information regarding their observations, assessment, and treatment of Mr. Abbott, 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 regarding the treatment of Mr. Abbott by law enforcement, as reported by those providing the treatment, has been redacted from the reports and audio/video 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.

In addition, specific information regarding Mr. Abbott's medical condition as observed by law enforcement has been redacted from the reports and audio/video 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.

Patient health care records and information obtained from those records has been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82. I also redacted certain other medical information, not directly governed by Wis. Stat. §§ 146.81 and 146.82, 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. §§ 148.81 and 146.82. 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. Limited medical information directly relevant to the investigation has been released under Wis. Stat. § 175.47(5)(b).

A copy of Mr. Abbott's death notice has been redacted pursuant to the limitations of Wis. Stat. §§ 69.20 and 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 such information is not directly governed by Wis. Stat. §§ 69.20 and 21, the information has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of vital records is expressed in Wis. Stat. §§ 69.20 and 21. I find that the same underlying public policy of protecting the confidentiality and privacy of vital record information outweighs any public interest in disclosure of this information.

Information that specifically identifies medications prescribed for Mr. Abbott has been 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. §§ 148.81 and 146.82. 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 the redacted medical information.

As documented in the DCI case file, squad video, and body camera recordings from the officers involved in responding to the scene of the officer-involved shooting were collected by DCI for review. The DCI case file contains the body camera footage from Loyal Police Department Officer Jacob Schar and squad camera footage from Clark County Sheriff's Deputy Nicholas Klemm, which captures the interaction with Mr. Abbott. The footage from these two cameras was prepared for release as well as dispatch audio. Due to the time necessary to review and prepare these materials, the other videos mentioned in this report are not included in this release. DCI's review of all of these recordings is summarized in detail 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 request process and will be processed accordingly.

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
Assistant Attorney General
Office of Open Government

PMF:pss

Enclosure