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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 September 16, 2018 shooting by Manitowoc Police Department Officer Fielder Clark, which resulted in the death of Bruce Smith, has been prepared for release. The Manitowoc 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 **18-6737: Manitowoc PD OID – Bruce Smith**. 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 the DOJ Communications Office at dojcommunications@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 Mr. Smith at the scene and during his subsequent autopsy.
- Description of family members' emotion on being informed of Mr. Smith's death.

- Full names for Mr. Smith’s family members. Instead, family members’ names have been reduced to initials only, except where they share the last name Smith.
- Personal letters and family photographs recovered from Mr. Smith’s backpack. These records were of no evidentiary value to this investigation. In performing the public records balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of individuals and protecting the privacy of these individuals outweighs any public interest in disclosure of this information. *See Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010).*
- Social security and driver’s license numbers for Mr. Smith. In performing the public records balancing test, 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 Mr. Smith’s social security or driver’s license numbers.
- Child support account information for Mr. Smith’s children. In performing the public records balancing test, 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. Additionally, well-established public policy recognizing the confidentiality and privacy of financial identifying information is expressed in Wis. Stat. § 19.36(13). To the extent Wis. Stat. § 19.36(13) does not apply to the redacted information, I find that the same underlying public policy of protecting the confidentiality and privacy of financial identifying information outweighs any public interest in disclosure of this information.
- Law enforcement records regarding juvenile offense information for Mr. Smith. These records have been redacted pursuant to Wis. Stat. § 938.396. Additionally, to the extent these records are not directly governed by Wis. Stat. § 938.396, I have determined the records and information should be redacted pursuant to the public records 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).*

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 preparing these records for 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; *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 prior to release:

- Names of witnesses and their adult and juvenile family members, as well as the names of others mentioned by individuals interviewed and within radio dispatch recordings. One exception was made: The names of two individuals whose apartment was searched in connection with this investigation have been reduced to initials only, rather than redacted in full.
- Addresses that would identify the above individuals. One exception was made: The address of the apartment that was searched in connection with this investigation has not been redacted.
- Other information that would identify the above individuals, including dates of birth, personal telephone numbers, license plate numbers, and signatures for these individuals, along with information regarding their work, health, and/or family members that would identify them. License plate numbers have been redacted only where directly associated with a specific individual, but not where mentioned as being openly visible, e.g., parked with other vehicles in the apartment complex's parking lot.
- Handwritten statements provided by witnesses.
- Photographs taken inside the apartment that was searched in connection with this investigation, but which were not deemed pertinent to this investigation.
- An audio recording of a witness call to police to report the fire alarm activation, and portions of the body camera recording audio where a witness is speaking to officers.
- Glimpses inside a neighboring apartment visible in the body camera video recording.

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 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 outweighs any public interest in disclosure of the dates of birth.

Home addresses and personal telephone numbers for 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. In the case of neighborhood canvass contacts made in the area of the scene, the street names have been left unredacted, with just the street number and apartment number (where applicable) redacted pursuant to the balancing test.

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 home telephone numbers of law enforcement officers and firefighters have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

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. 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.

Similarly, the non-public cell telephone numbers for Manitowoc Fire & Rescue firefighters, for Probation and Parole personnel at the Department of Corrections, and for the regional manager of the apartment complex where this incident occurred have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. General numbers for these agencies and this business are publicly available. I determined that the public interest in these individuals performing their job responsibilities without disruption and unnecessary interruption if their direct cell phone numbers became public knowledge, and in facilitating citizen cooperation with law enforcement investigations, outweighs any public interest in disclosure of the non-public cell phone numbers for these individuals. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 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.

A state ID card number has been redacted pursuant to Wis. Stat. § 343.50(8). To the extent the number is not directly governed by Wis. Stat. § 343.50(8), the number was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of information concerning or relating to an applicant or identification card holder is expressed in Wis. Stat. § 343.50(8). I find that the same underlying public policy of protecting the confidentiality and privacy of such information and the public interest in the expectation of privacy on the part of individuals in their personal lives and in preventing the misappropriation or misuse of such information upon any subsequent disclosure, outweigh any public interest in disclosure of this information.

National Crime Information Center (NCIC) records have been redacted. These records are provided to law enforcement personnel only, require certification to access, and are confidential and prohibit secondary dissemination. 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 and organizations. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in access to NCIC records and in cooperating with other law enforcement agencies and organizations outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. Additionally, I concluded that the public interest supports maintaining the confidentiality of these law enforcement investigative techniques and use of technology and the results, to preserve the effectiveness of those confidential techniques and technology, which would be

undermined by disclosure. Applying the public records balancing test, I determined that the public interest in protecting the ability of law enforcement to gather information confidentially when conducting sensitive investigations and in protecting the privacy of citizens involved in those investigations outweighs any public interest in disclosure. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

The 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); *Linzmeyer*, 254 Wis. 2d 306, ¶ 41.

Bank account 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.

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. The vehicle computer screen visible within photos of Officer Clark's squad car has also been redacted, for the same reasons. 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 of the redacted content. *Cf. Wis. Stat. § 19.31; Linzmeyer*, 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. Information

revealing the location of Officer Clark's education while he was a juvenile has also been redacted, for the same reason. 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 juvenile education locations. Details regarding the specific shifts worked by the officers involved in the September 16, 2018 shooting incident have not been redacted from the records.

Emergency medical services (EMS) personnel working with Manitowoc Fire & Rescue were already at the shooting scene when this incident occurred, having responded to an earlier report of a fire alarm activated at the nearby apartment building. These personnel immediately responded to Mr. Smith's location to provide life-saving attempts for Mr. Smith. Specific information regarding their assessment and treatment of Mr. Smith, as observed or reported by the EMS personnel or other witnesses, including in the audio portion of the body camera video recording, 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.

Copies of Manitowoc Fire & Rescue reports contained within the DCI case file have been redacted pursuant to Wis. Stat. §§ 256.15(12) and 146.82(5)(c) except for the information authorized for release by Wis. Stat. § 256.15(12)(b). In view of the strong public policy protecting the confidentiality of personal medical information expressed in Wis. Stat. 146.82(5)(c), and in accordance with Wis. Stat. § 256.15(12), excerpts from these reports have also been redacted where present within related DCI case reports. 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.

DCI report number **18-6737/24** documents DOJ's receipt of a provisional autopsy findings report for Mr. Smith, provided by the Milwaukee County Medical Examiner's Office. The DCI report has been included with the released records; however, the attached records, provided by the medical examiner's office, have been wholly redacted from the release. Those records were provided to DOJ by the Milwaukee County Medical Examiner's Office on the condition that the reports would not be shared with any person outside the criminal investigation, and the medical examiner's office 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 reports 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 reports 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 Milwaukee County Medical Examiner's Office provided the reports to DOJ, outweighs any public interest in disclosure by DOJ of the report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, the medical examiner's records may be requested directly from the Milwaukee County Medical Examiner's Office records custodian.

As documented in DCI report number **18-6737/39**, a video recording from Officer Clark's squad car was collected by DCI for review, and a copy of that recording is included with the digital records being produced at this time. DCI also collected video recordings for the time period of the shooting from a Manitowoc Police Department body camera worn by an officer who responded to the scene after the shooting and was assigned to guard the scene. That same body camera was then maintained at that location by other officers subsequently assigned to guard the scene. DCI's review of the recordings from this body camera is documented in DCI report number **18-6737/40**. The extreme darkness at the scene during the majority of this video footage substantially increases the time required to produce a redacted version of the video for public release. Therefore, only the first 11.5 minutes of the body camera video, which includes audible conversations among officers at that location, has been produced for inclusion with this release. The remaining video footage, which is substantially similar visually and contains only very minimal audio content not deemed pertinent to this investigation, has not been prepared for release at this time. If you wish to request additional footage, you may do so through DOJ's regular public records request process, and it 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,

A handwritten signature in blue ink that reads "Paul M. Ferguson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government