January 7, 2019

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 19, 2018 shooting by Dane County Sheriff’s Deputies Matthew Earl and David Lambrecht and City of Middleton Police Officers Tyler Loether and Richard O’Connor, which resulted in the death of Anthony Y. Tong, has been prepared for release. The Dane 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 18-6900: Middleton Active Shooter and OID. 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 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/video of Anthony Tong at the scene and during his subsequent autopsy.
- Graphic descriptions of Mr. Tong’s injuries and of the scene.
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, driver's license numbers, and license plate numbers for these individuals have been fully redacted from the reports prior to release. In addition, details regarding the possible existence of security systems present in the homes of Mr. Tong's neighbors have been redacted to preserve the privacy and safety of these neighbors.

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:

- Graphic photographs/video of the shooting victims at the scene and the hospital.
- Graphic descriptions of the injuries of the shooting victims.
- The names of the shooting victims have been redacted in full, as have the names of their immediate family members.
- The names of adult witnesses, Mr. Tong's family members, and others mentioned by individuals interviewed were redacted. (Initials for the names of these individuals
were not redacted.) In instances where a family member shared the last name of Mr. Tong, only the first names were redacted to initials.

- The names of Mr. Tong's co-workers have been redacted in full.

- Other information that would identify the above individuals, including place of employment, dates of birth, home addresses, email addresses, home and personal cellular telephone numbers, and signatures for these individuals have been redacted, along with information regarding routine work hours and vehicle descriptions.

- Audio recordings of witness interviews and witness calls to 911.

- Digital images of the individual workspaces of Mr. Tong's co-workers have been redacted, to avoid identification of those co-workers and re-victimization of those individuals.

- Digital images of witnesses.

- Mr. Tong's prior places of employment.

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, passport numbers, and photographs 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, social security numbers, driver's license numbers, passport numbers, and photographs of individual persons.

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

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, home telephone numbers, direct work-related telephone numbers for citizens, personal cellular telephone numbers, and personal electronic mail addresses 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, 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.

Bank account numbers, deposit amounts, copies of cancelled checks, 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.

Specific information within case report 18-6900/8 that reveals the quantity and location of security cameras employed by the victim business 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 a business and the people who work there outweighs any public interest in detailed information regarding the business’ security systems. Information regarding the results of DCI’s canvass for and review of related surveillance video is documented in the reports. A recording from one of the cameras that contained footage of Mr. Tong within the business at the time of the shooting has been provided.

In addition, information regarding the business’s security access codes within case report 18-6900/10 has been redacted to protect the security of the related system, which would be compromised by public disclosure of this information. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the public interest in protecting the security of this private business security system, the business, and the people who work there
outweighs any public interest in disclosure of the related security access codes. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41.

DCI report 18-6900/86 documents the receipt of interior surveillance video from Sentry insurance, located in the same building as WTS Paradigm. The provided video does not capture any of the shooting incident and is not being provided. I determined that public disclosure of the video may compromise the internal security of the business by revealing locations of cameras and other security measures. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the public interest in protecting the security of this private business security system, the business, and the people who work there outweighs any public interest in disclosure of the related security video. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41.

Descriptions of the emotional distress exhibited by the shooting victims have been redacted pursuant to the public records balancing test to protect their privacy as crime victims. Release of the descriptions would revictimize them and adversely impact their emotional healing. In applying the balancing test, I concluded the public interest in respect for crime victims outweighs any public interest in disclosure. Cf. Wis. Stat. § 19.31; Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

The name of the officer who piloted the Unmanned Aerial Vehicle (Drone), which could be used to obtain individually identifiable information about this officer, has 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 this information.

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.

Medical information, patient health care records, and information obtained from those records has been redacted pursuant to Wis. Stat. §§ 146.81 and 146.82. To the extent that Wis. Stat. §§ 146.81 and 146.82 do not apply, these 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 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 records and 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).

Emergency medical personnel working with Middleton and Cross Plains fire departments responded to the shooting scene to provide medical care for Mr. Tong. Specific information regarding their assessment and treatment of Mr. Tong, as observed or reported by the EMT personnel or other witnesses, including in the audio portion of video 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 life-saving attempts for Mr. Tong 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.

Information and photographs that identify medications prescribed for Mr. Tong 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. §§ 146.81 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.

Mental health treatment records have been redacted pursuant to Wis. Stat. § 51.30(4); Watton v. Hegerty, 2008 WI 74, ¶ 25, 311 Wis. 2d 52, 751 N.W.2d 369. Other mental health information also has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest and expectation of privacy in this type of information is embodied in the confidentiality accorded mental health registration and treatment records in Wis. Stat. § 51.30; cf. Watton, 311 Wis. 2d 52, ¶ 25 (legislative recognition of public interest in protecting confidentiality of individuals' mental health information). I determined that the same public policy respecting the confidentiality of these individuals' mental health information reflected in Wis. Stat. § 51.30 outweighs any public interest in disclosure of their mental health information.

Confidential business information, including but not limited to the names of the affected business's clients, competitors, technical capabilities, documents, notes, and drawings showing the creations, ideas, or mental processes of WTS' employees, and other business documents that, if released, could harm the competitive business position of the affected business, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing
test. It is in the public interest that investigators be able to obtain sensitive business information from a victim business that may have investigative value. To release this information will adversely impact law enforcement's ability to gain similar cooperation in future investigations, potentially compromising the ability of DCI to conduct comprehensive criminal investigations. I find that the public interest in protecting this economically valuable business information and in facilitating cooperation with law enforcement in sensitive investigations, as well as the public policies expressed in Wis. Stat. § 19.36(5), outweigh any public interest in disclosure of this described information. Cf. Linzmeyer, 254 Wis. 2d 306, ¶ 38; see also Democratic Party of Wisconsin v. Wisconsin Dep't of Justice, 2016 WI 100, 372 Wis. 2d 460, 888 N.W.2d 584.

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 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 September 19, 2018 shooting incident have not been redacted from the records.

Specific details regarding SWAT, tactical team, and Task Force assignments for officers who responded to this incident have been redacted to preserve the security and effectiveness of these law enforcement techniques. 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.

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 shooting were collected by DCI for review. Due to space constraints, the very large investigatory file, and 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.
Federal Bureau of Investigation (FBI) reports provided to DOJ in connection with this investigation 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. Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

DCI case report 18-6900/5 includes the name of a federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) special agent. DOJ consulted with ATF’s legal counsel about disclosure of the names of ATF personnel because the ability of DOJ to work effectively with ATF on future law enforcement matters requires us to respect requested confidentiality regarding ATF employees and information. ATF advised us that, pursuant to 5 U.S.C. § 552(b)(7)(C), it protects the names of its agents from disclosure because of the nature of their job, which entails a significant threat of retaliatory action against known agents. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39. In performing the Wis. Stat. § 19.35(1) balancing test, I determined that the underlying public interest in effective law enforcement and safety of federal ATF agents outweighs the general presumption of disclosure under the public records law.

Investigative reports provided confidentially to DOJ by ATF have been redacted from case report 18-6900/112. ATF provided the reports to DOJ for its internal use only, on the condition that the reports remain the property of ATF and may not be redistributed outside DOJ without express authorization from ATF. ATF would not have provided these reports to DOJ without DOJ’s acceptance of those conditions. ATF authorized DOJ to disclose the substantive information from the investigative reports that is included in the narrative portion of case report 18-6900/112. Therefore, in performing the Wis. Stat. § 19.35(1)(a) balancing test, I determined there is a public interest in honoring the conditions under which ATF provided the reports to DOJ and in cooperating with ATF 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 report-sharing and significantly impair cooperative law enforcement efforts between DOJ and ATF. I concluded that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which ATF provided the investigative reports to DOJ, outweighs any public interest in disclosure by DCI of the ATF reports. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

A death certificate has been redacted pursuant to the limitations of Wis. Stat. §§ 69.20 and 69.21, 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 that Wis. Stat. §§ 69.20 and 69.21 do not directly apply, this documents has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because this document is purely personal and to protect the privacy of the record subject’s family. Well-established public policy recognizing the confidentiality and privacy of vital records is expressed in Wis. Stat. §§ 69.20 and 69.21. I find that the same underlying public policy of protecting the confidentiality and privacy of vital records and the public interest in the expectation of privacy on the part of individuals in their personal lives outweigh any public interest in disclosure of this information.

Certain information involving confidential law enforcement investigative technology and techniques has been redacted to preserve the effectiveness of that confidential technology and those techniques, which would be undermined by disclosure. The ability of law enforcement to investigate crimes and carry out their other responsibilities effectively would be impaired significantly if this information were widely disclosed. Applying the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I determined that the public interest in effective investigation of crime, protection of public safety, and protection of the ability of law enforcement to use its technology effectively and gather information confidentially when conducting sensitive investigations outweighs any public interest in disclosure. Cf. Wis. Stat. § 19.31; Linzmeyer, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

An IBM personnel number for a Dane County Sheriff’s Deputy and a credential identification number, which are analogous to social security numbers or other economically valuable individually identifiable information, 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 this identification.

Account user names and passwords have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test 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 this information.

Mr. Tong’s employee performance evaluations have been withheld in their entirety pursuant to Wis. Stat. § 19.36(10)(d). To the extent such records and information are not directly governed by Wis. Stat. § 19.36(10)(d), the evaluations have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of an employer’s records containing information relating to staff management planning, including performance evaluations, is expressed in Wis. Stat. § 19.36(10)(d). I find that the same underlying public policy of protecting the confidentiality and privacy of this information outweighs any public interest in disclosure.
Mr. Tong's personnel file documentation, including but not limited to direct deposit payroll forms, life and health insurance applications, and deferred compensation enrollment 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 the expectation of privacy on the part of individuals in their personal lives and in protecting against identity theft, as well as the public policies expressed in Wis. Stat. §§ 19.36(10)(a) and (d) and 19.36(13), outweigh the public interest in disclosure of this information.

Information regarding whether Mr. Tong is a concealed carry license holder in Wisconsin has been redacted pursuant to Wis. Stat. §175.60(12g)(b)(1), which prohibits a law enforcement agency from disclosing any information obtained from the Wisconsin Crime Information Bureau regarding an individual's status as a licensee unless in the context of a prosecution for an offense in which the person's status as a licensee or holder of a certification card is relevant.

DCI Report number 18-6900/150 references diagrams obtained from the Wisconsin State Patrol (WSP). The data requires redaction pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because release of the video unredacted would disclose confidential business information and information that would revictimize victims as explained in greater detail elsewhere in this letter. As a result, the public interest in disclosure of portions of the data is outweighed by the public interest in nondisclosure. Because the formatting of the data prevents the redaction of information from those scans, none are able to be provided. The diagrams that are viewable are attached to the report. An animation video of the scene generated by the WSP is being provided as well.

Subpoenas were served by DCI on AT&T and Verizon for phone records believed to be associated with Mr. Tong. The Verizon records were determined to be associated with the telephone number of Mr. Tong's brother and were not incorporated into the case file and therefore are not included with this release. AT&T call detail information was obtained pursuant to subpoena, and AT&T would only provide the information to law enforcement pursuant to a court order or subpoena. The provided records include terminology specific to AT&T call records and data, as well as call information and telephone numbers determined to not have relevance to the investigation. This information has been withheld pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because release of the video unredacted would disclose confidential business information and purely personal contact information as explained in greater detail elsewhere in this letter. As a result, I determined that the public interest in the expectation of privacy on the part of individuals in their personal lives and in protecting this economically valuable business information, as well as the public policies expressed in Wis. Stat. § 19.36(5), outweighs any public interest in disclosure. The analysis of the records is provided in DCI report 18-6900/149.

A supplementary police report provided by the Sioux Falls (South Dakota) Police Department has been redacted. South Dakota law provides for explicit confidentiality of certain police records, and the Sioux Falls Police Department would only provide the report to the DCI on the condition that the report not be disclosed publicly. Therefore, in performing the Wis. Stat. § 19.35(1)(a) balancing test, I determined there is a public interest in honoring the conditions under which the Sioux Falls Police Department provided
the reports to DOJ and in cooperating with the Sioux Falls Police Department 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 report-sharing and significantly impair cooperative law enforcement efforts. 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 Sioux Falls Police Department provided the investigative report to DOJ, outweighs any public interest in disclosure by DCI of the Sioux Falls Police Department report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 30, 32, 39.

DCI report number 18-6900/11 documents DOJ's attendance at the autopsy for Mr. Tong, conducted by the Dane County Medical Examiner's Office. The DCI report has been included with the released records; however, at the time of the records release, no final autopsy report has been received by the DCI. The information provided to and observed by the DCI during the autopsy has been wholly redacted from the release. The information was provided to DOJ by the Dane County Medical Examiner's Office on the condition that the information would not be shared with any person outside the criminal investigation, and the medical examiner's office would not provide the information 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 and information 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 Dane 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 Dane 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 Dane County Medical Examiner's Office records custodian.

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.

As stated, access to copies of related photographs, audio recordings, and video recordings may be obtained by contacting the DOJ Communications office, and such records will be made available via a list of links. However, certain photographs have not been included in the records prepared for release via the list of links. Those wishing to request additional photographs not included in the list of links may do so through DOJ's regular public records request process, and such requests 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,

[Signature]

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw