



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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August 22, 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 April 29, 2019 deaths of Ter-rance Phillit Simmons and Terrance P. Simmons following a law enforcement pursuit and subsequent deployment of tire deflation devices by the Wisconsin State Patrol, has been prepared for release. The Columbia County Special Prosecutor 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 **19-2701: WSP OID (Interstate 39)**. 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 and video of Ter-rance and Terrance Simmons at the scene and during their subsequent autopsies, and graphic descriptions of their injuries.
- Full names for the Simmons family members. Instead, family members' names have been reduced to initials only, except where they share the last name Simmons.

- Social security and Wisconsin ID/driver's license numbers for the decedents. 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 the decedents' social security or driver's license numbers.
- The home address of the decedents.

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. *Linzmeier 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 and that crime victims include both persons against whom crimes have been committed and the family members of those persons. Wis. Stat. §§ 950.01 and 950.02(4)(a). Other well-established public policy also 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). 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; see also *Democratic Party of Wisconsin v. Wisconsin Dep't. of Justice*, 2016 WI 100, ¶ 28, 372 Wis. 2d 460, 888 N.W.2d 584 ("Wisconsin's constitutional commitment to the fair treatment of victims and their privacy rights, together with this court's commitment to minimizing victims' suffering, weigh in favor of nondisclosure.").

Even in those situations in which a criminal prosecution does not occur, it is the policy of our office to consider the privacy rights of those who could be considered victims entitled to these protections when applying the balancing test regarding the release of investigative records. I concluded the public interest favoring protection of victims from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in the disclosure of the types of information listed below.

- The names of the victims assaulted by Mr. Simmons have been redacted. They are crime victims and must be afforded the privacy and dignity protected by the Wisconsin Constitution and statutes. Release of their names and other personally identifiable information will re-victimize them.
- The name of the truck driver who was struck by the decedents' vehicle has been redacted to initials, for the reasons set forth above.

- The license plate of the vehicle operated by Ter-Rance Phillit Simmons and name of the registered owner.
- Other information that would identify the above individuals, such as home addresses, personal telephone numbers, employment information, driver's license numbers, insurance information, signatures, and other personally identifiable information.

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; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of officer-involved death 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, as well as the names of others mentioned within radio dispatch recordings.
- Addresses that would identify the above individuals.
- Other information that would identify the above individuals, including dates of birth, personal telephone numbers, license plate numbers, and signatures for these individuals. License plate numbers have been redacted only where directly associated with a specific individual.
- Handwritten statements provided by witnesses.

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; *Linzmeier*, 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.

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.

Photographs of Wisconsin ID cards issued by DOT have been redacted pursuant to Wis. Stat. § 343.50(12)(e).

The non-public cell telephone numbers for a DCI Special Agent and a Sauk County law enforcement officer 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. General numbers for these agencies 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, outweighs any public interest in disclosure of the non-public cell phone numbers for these individuals. *Cf.* *Linzmeier*, 254 Wis. 2d 306, ¶¶ 31, 32, 39.

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.

DOT files, accessed through the DOJ TIME System, which are provided 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. I concluded that disclosure of such information by DOJ would significantly impair future information sharing and other cooperative law enforcement efforts between DOJ and other government agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in ensuring law enforcement access to DOT 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.; *New Richmond News*, 370 Wis. 2d 75.

Additionally, I redacted information originating from the National Law Enforcement Telecommunications System (NLETS) as disclosure of such information outside of authorized users of NLETS is strictly prohibited. NLETS, a private, non-profit corporation owned by the states, is an interstate justice and public safety network used to exchange law enforcement, criminal justice, and public safety-related information. Disclosure of information obtained through NLETS outside of authorized users is strictly prohibited. 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 NLETS member agencies and organizations. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in ensuring DOJ's access to NLETS and in cooperating with NLETS member agencies and organizations outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

A Wisconsin Crime Alert Network Bulletin (WiCAN) has been redacted in full. WiCAN Alerts, disseminated by DOJ, allow local, state, federal, and tribal law enforcement agencies to send out crime alert bulletins to targeted recipient groups and allow the sender to restrict the recipient groups. This alert bulletin was specifically classified as Law Enforcement sensitive, with no public dissemination permitted and was distributed to a select group of authorized law enforcement recipients with the understanding that it would not be distributed to the general public. Disclosure of the alert bulletin by DOJ would preclude future information sharing and significantly impair other cooperative law enforcement efforts between DOJ and participating law enforcement agencies. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded the public interest in maintaining the cooperative relationship between DOJ and the participating law enforcement agencies by honoring the conditions under which the alert bulletin was drafted and distributed outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Bank account numbers 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.

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.

As documented in the DCI case file, squad video recordings and body camera recordings from the officers involved at the accident scene were collected by DCI for review. Additionally, 15 DOT traffic camera recordings and multiple Wisconsin State Patrol radio and telephone files 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 audio and video that does not depict scenes or information 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. 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 process and will be processed accordingly.

The name of the Sauk County UAV pilot, 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 valuable individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of the name of the UAV pilot.

DCI case report *19-2701/32* 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.

A firearms trace report provided confidentially to DOJ by ATF has been redacted from case report *19-2701/32*. ATF provides firearms trace reports to DOJ for its internal use only, on the condition that firearms trace reports remain the property of ATF and may not be redistributed outside DOJ without express authorization from ATF. ATF would not have provided this report to DOJ without DOJ's acceptance of those conditions. 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 report 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 report 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 firearm trace report to DOJ, outweighs any public interest in disclosure by DCI of the ATF firearms trace report. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Photographs of medications recovered from the vehicle but prescribed to an unrelated third party 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 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

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 April 29, 2019 shooting incident have not been redacted from the records.

DCI report numbers **19-2701/38 and 39** document DOJ’s receipt of the autopsy and toxicology records for Ter-rance and Terrance Simmons, provided by the Dane 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 Dane 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 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.

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, appearing to read "Paul M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw