



STATE OF WISCONSIN
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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 June 11, 2019 shooting by Wood County Deputy Sheriff Nathan Dean, which resulted in the death of Logan O. Johnsrud, has been prepared for release. The Wood County District Attorney determined there is no basis to prosecute the law enforcement officers involved, and DCI is releasing its case file pursuant to Wis. Stat. § 175.47(5)(b).

The DCI case in question is *19-3633: Officer Involved Death – Village of Arpin, Wood Co.*. 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) public records 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 Mr. Johnsrud at the scene and during his subsequent autopsy and graphic descriptions of his injuries.

In performing the balancing test, I determined that the public interest in protecting the privacy of this family, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of the described records. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶ 38, 254 Wis. 2d 306, 646 N.W.2d 811.

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 shootings, 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 adult witnesses, Mr. Johnsrud's family members, as well as the names of others mentioned by interviewed individuals were redacted to initials. In instances where a family member shared the last name of Mr. Johnsrud, only the first names were redacted to initials. The names of juveniles and victims have been redacted in full.

The names of juveniles were also redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Revealing the names of the juveniles is not essential to understanding the requested records. In performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in the records, especially minor children and juveniles, outweighs any public interest in information about the conduct of governmental affairs. Well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. §§ 48.396 and 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. § 48.396* ("Law enforcement officers' records of children . . . shall not be open to inspection or their contents disclosed" unless certain exceptions apply); *Wis. Stat. § 938.396* ("Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed" unless certain exceptions apply).

The names of victims were also redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect their privacy. 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)*. 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. 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 the victims from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in the disclosure of this information.

- Other information that would identify the above individuals, including dates of birth, home addresses, personal telephone numbers, license plate numbers, and signatures for these individuals.
- Audio recordings of the above individuals. The content of the recordings is summarized in the DCI case reports.
- The home address and prior home address of the decedent.
- 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 and social security numbers of individual persons have been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded that the public policy in favor of protecting the confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure of this information.

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.

The non-public cell telephone numbers for DCI Special Agents, responding law enforcement officers and first responders, and a Probation and Parole agent 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. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31, 32, 39. Additionally, in applying the public records balancing test, I determined that the strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of the cell telephone numbers of law enforcement officers. Allowing the 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. *Id.*, ¶¶ 30, 32, 39.

I redacted information of a purely personal nature pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public policy 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).

Bank account numbers of individuals depicted in photographs 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 responding officers 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.

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 June 11, 2019 shooting incident have not been redacted from the records.

Emergency medical personnel working with the Pittsville fire company and Arpin emergency medical services responded to the shooting scene to provide medical care to Mr. Johnsrud and Deputy Leigh. Specific information regarding their assessment and treatment of Mr. Johnsrud and Deputy Leigh, as observed or reported by the EMT personnel or other witnesses, including in the audio portion of video recordings, has been redacted in accordance with Wis. Stats. §§ 256.15(12) and 146.82(5)(c). To the extent that the information is not directly governed by Wis. Stats. §§ 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 health information, as well as the analogous restrictions on release of patient information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of this information.

Copies of the Pittsville EMS and Arpin EMS "run sheets" (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.

Specific information regarding the medical treatment of Mr. Johnsrud and Deputy Leigh and observations of that medical treatment have 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 information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of the redacted information.

Descriptions of the emotional distress exhibited by the relatives of the shooting victim 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, as explained in this letter, outweighs any public interest in disclosure. *Cf.* Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

Specific details regarding SWAT team assignments for officers who responded to this incident and information containing specific details regarding weapons assigned to law enforcement personnel have been redacted to preserve the safety, security, and effectiveness of these law enforcement techniques and 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.

DCI report numbers *19-3633/13 and 53* document DOJ's receipt of the preliminary and final autopsy and toxicology records for Logan Johnsrud provided by the University of Wisconsin (UW) Hospital, Madison. The DCI report has been included with the released records; however, the attached records, provided by the UW Hospital, have been wholly redacted from the release. Those records were provided to DOJ by the UW Hospital on the condition that the records would not be shared with any person outside the criminal investigation, and the hospital would not provide the records 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 UW Hospital records were provided to DOJ and in cooperating with the UW Hospital so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor the conditions by disclosing the records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the UW Hospital. 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 UW Hospital provided the records to DOJ, outweighs any public interest in disclosure by DOJ of the records. *Cf.* *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. If desired, the medical examiner's records may be requested directly from the UW Hospital records custodian.

Mental health information was 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. *See also* *Watton v. Hegerty*, 2008 WI 74, ¶ 25, 311 Wis. 2d 52, 751 N.W.2d 369 (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 the mental health information.

Certain photographs that depict areas of the interior of the residence unrelated to the shooting incident have been withheld in full or partially redacted. These images depict the interior of this private home and personal belongings of the home's residents. In performing the Wis. Stat. § 19.35(1)(a) public records balancing test, I determined that the public interest in protecting the security of this residence and the safety of the people who live there, and in protecting the privacy of these individuals, outweighs any public interest in disclosure of the redacted images.

Only one copy of records for which duplicate copies exist has been included with the records prepared for release. *Stone v. Bd. of Regents*, 2007 WI App 223, ¶ 20, 305 Wis. 2d 679, 741 N.W.2d 774.

The law permits DOJ to impose fees for certain "actual, necessary and direct" costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying, and mailing the requested records if the total amount exceeds \$5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees, and therefore the records are being made available online at this time without any payment required.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,



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Assistant Attorney General
Office of Open Government

PMF:hpw