September 13, 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 June 25, 2019 shooting by City of Neenah Investigator Christopher Gorden, which resulted in the death of Shawn Blowers, has been prepared for release. The Winnebago County District Attorney has 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 19-3947 - Shawn Blowers. 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, these records have been prepared for release mindful 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, the Wis. Stat. § 19.35(1)(a) public records balancing test was applied, and the public interest in treating surviving loved ones of the deceased with respect for their privacy and dignity outweighed any public interest in disclosure of the following records:

- Graphic images of Mr. Blowers at the crime scene, the hospital, and during his subsequent autopsy, as well as distressed audio voice recordings.

- Statements made by Mr. Blowers regarding family members from reports and audio recordings.
- Personal items and family images from photographs and video taken inside Mr. Blowers's apartment.

- Images of a juvenile's bedroom and belongings from crime scene photographs.

- Bank account number on direct deposit paperwork.

The bank account number found on a direct deposit statement in Mr. Blowers's bedroom was also redacted from crime scene photos pursuant to Wis. Stat. § 19.36(13). To the extent this information is not directly governed by Wis. Stat. § 19.36(13), 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 financial identifying information and the protection of economically valuable information from misappropriation or misuse is expressed in Wis. Stat. § 19.36(13). 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. 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.

- Prescription medication.

Information that specifically identifies medications prescribed for Mr. Blowers was also 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. The same underlying public policy of protecting the confidentiality and privacy of personal medical information outweighs any public interest in disclosure of this information.

In performing the balancing test, 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.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, 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 was redacted from the records prepared for release:

- Names of adult witnesses, family members, and others mentioned by individuals interviewed. (Initials for the names of these individuals were not redacted.) The last name of family members was left unredacted if it was the same as the deceased individual's last name.

- The full name of a juvenile interviewed and mentioned by witnesses.

The juvenile's name was also redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, 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. The same underlying public policy of protecting the confidentiality and privacy of children and juveniles outweighs any public interest in disclosure of the juvenile's name. 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).

- Other information that would identify the above individuals including dates of birth, home addresses, apartment numbers for those living in the same apartment complex, home and personal cellular telephone numbers, and information regarding routine work hours and places of employment.

- Images of personal belongings from inside a neighbor's garage where a bullet was located.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, 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, 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 release, for the reasons explained below.

Birthdates of individual persons were redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. Pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test, 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, home telephone numbers, and personal cellular telephone numbers were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. 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 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.

Direct telephone numbers assigned to specific law enforcement officers were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these numbers are not made public and must remain confidential. The strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of these direct telephone numbers of the law enforcement officers. Allowing the direct telephone numbers of the 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.

Purely personal information regarding victims, witnesses, law enforcement, and their families was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest in avoiding unnecessary intrusion into the personal lives of individuals and in protecting the privacy of these individuals outweighs any public interest in disclosure of the purely personal information. See Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010).

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

Wisconsin Department of Transportation (DOT) files, accessed through the Wisconsin Department of Justice 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. 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 v. City of New Richmond, 2016 WI App 43, 881 N.W.2d 339.
The street addresses for the offices where DCI agents work at confidential locations shared by undercover agents were 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. The public interest in protecting the confidentiality of these locations, so that undercover agents can effectively investigate criminal activity, outweighs any public interest in disclosure of these confidential street addresses. Wis. Stat. § 19.35(1); Linzmeyer, 254 Wis. 2d 306, ¶ 41.

Crime Laboratory records were 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 were redacted from the records prior to release.

Emergency medical services (EMS) personnel working with Gold Cross Ambulance Service responded to the shooting scene to provide medical care for Shawn Blowers. Specific information regarding their assessment and treatment of Mr. Blowers, as observed or reported by the EMS personnel or other witnesses, including in the audio portion of video recordings, was 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), pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, 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 medical treatment of Mr. Blowers by law enforcement, as reported by those providing the treatment, was 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. § 146.82. 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.

Specific information identifying routine shifts worked by law enforcement officers and first responders was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the officers and first responders, their families, and their homes. The public interest in protecting the security of the officers and first responders, their families, and their homes outweighs any public interest in information regarding their routine shifts. Details regarding the specific shifts worked by the officers and first responders involved in the shooting incident, and response to the scene after the shooting, were not redacted from the records.

Information containing specific details regarding weapons assigned to law enforcement personnel was redacted to preserve the safety, security, and effectiveness of the law enforcement officers. Pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test, 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.

Information that reveals undercover assignments for local law enforcement personnel, as well as information and images regarding vehicles used in undercover assignments, was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of this information could endanger the safety of the law enforcement personnel. Additionally, providing this information could jeopardize the operations of undercover personnel who may be functioning in a role in which their true status as an active law enforcement officer is unknown to subjects, targets, witnesses, and others who interact with that undercover officer. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. The public interest in revealing this information is outweighed by the public interest in effectively investigating and prosecuting criminal activity and in protecting the safety of law enforcement personnel and promoting effective law enforcement investigations. Cf. Linzmeyer, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

A search term to access a website for child pornography was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. There is a strong public interest in not disclosing this information, and there is a public interest in avoiding subsequent disclosure of sexual content reviewed by investigators in this case. Disclosure of search terms and websites may contribute to the reproduction of child pornography. In performing the balancing test, the public interest in any disclosure of this information is outweighed by the public interest in nondisclosure.

As documented in the DCI case file, 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. Additional materials may be requested by specifying the report number. Such requests should be made through ordinary public records channels and will be processed accordingly.

Medical information was 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. § 146.82, and 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. Maclver 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).

DCI report number 19-3947/55 documents DOJ’s receipt of the final autopsy and toxicology records for Shawn Blowers, conducted 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, were 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. Pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test, 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. 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. Excerpts from the medical examiner's records, quoted within DCI report number 19-3947/55, were redacted for the same reasons. If desired, the medical examiner's records may be requested directly from the Milwaukee County Medical Examiner's Office records custodian.

Only one copy of records for which duplicate copies exist was 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)(d), 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

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