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DEPARTMENT OF JUSTICE

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October 14, 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 3, 2019 shooting by Fox Valley Metro Police Department Officer Sam Pynenberg, which resulted in the death of Eduard Lopez-Ucles, has been prepared for release. The Kewaunee 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 **19-5257: Fox Valley Metro PD OID – Eduard Alexis Lopez-Ucles**. 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](http://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](mailto: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, in preparing these records for release, DOJ was 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 video of Mr. Lopez-Ucles at the scene and during his subsequent autopsy and graphic descriptions of his injuries.

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 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 was redacted from the records prior to release:

- Names of adult witnesses, interviewed parties, and Mr. Lopez-Ucles' family members were redacted to initials. In instances where a family member shared the last name of Mr. Lopez-Ucles, only the first names were redacted to initials.
- Other information that would identify the above individuals, including dates of birth, home addresses, personal telephone numbers, and places of employment, for these individuals.
- The home address and email addresses of the decedent.

In performing the 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 were made from the records prior to public release for the reasons explained below.

Birthdates and social security numbers of individual persons were 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), 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, descriptions of the locations of the residences, and personal telephone numbers for citizens were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the 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 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). 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 Wis. Stat. § 19.35(1)(a) balancing test, Mr. Lopez-Ucles' personal cell telephone identification numbers, including International Mobile Equipment Identity (IMEI), Unique Device ID (UDID), and Unique Chip ID (ECID), were redacted. This is economically valuable individually identifiable information and was redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. The public interest in protecting this economically valuable individually identifiable information from misappropriation or misuse outweighs any public interest in disclosure.

The non-public cell telephone numbers for DCI Special Agents 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 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. Additionally, in applying the public records balancing test, 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.

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

Information originating from the National Law Enforcement Telecommunications System (NLETS) was redacted 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), 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.

Information of a purely personal nature was 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 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).

Attached to DCI CFU report number **19-5257/40** is a document titled "Job History for Mantzke – Archive." Certain information regarding file locations was redacted from that document because providing the information, individually and collectively, could substantially increase the risk of an intrusion into the DCI CFU computer system by unauthorized users. Such an intrusion would expose the work product of the Digital Forensic Examiner in this case and other cases, and that of other criminal analysts in other cases, to the risk of loss, destruction or manipulation. In addition, the digital evidence acquired by DCI DFU staff (and stored in its computer system) often includes the personally identifying and private information of investigative targets, crime victims, and other third parties. For these reasons, the disclosure of the redacted information could compromise the integrity of the entire DCI DFU computer system, the evidence or information electronically stored in it, and the privacy interests of investigative targets, crime victims, and other persons. Applying the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in protecting the security of the DCI DFU computer system and the integrity and confidentiality of the evidence, analytical reports, and other data stored therein outweighs any public interest in disclosure. *Cf. Wis. Stat. § 19.31; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41.

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. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), 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.

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 was redacted from the records prior to release.

As documented in the DCI case file, squad video recordings from responding officers and a cell phone extraction were collected by DCI for review. Due to space constraints, the very large investigatory file, and the time necessary to review this material, duplicative material or material that does not contain scenes or information of investigatory interest are not included in this release. DCI's review of this material is documented in individual reports within the DCI case file. Requests for additional materials may be made by specifying the 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 was 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, 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 3, 2019 shooting incident were not redacted from the records.

Emergency medical personnel from the Kewaunee Fire Department responded to the shooting scene to provide medical care to Mr. Lopez-Ucles. Specific information regarding their assessment and treatment of Mr. Lopez-Ucles, as observed or reported by the EMT personnel or other witnesses, including in the audio portion of video recordings, was 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, 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.

Specific information regarding the medical treatment of Mr. Lopez-Ucles and observations of that medical treatment were 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. 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.

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. 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).

DCI report number **19-5257/20** documents DOJ's receipt of the provisional autopsy records for Mr. Lopez-Ucles provided by the Milwaukee County Medical Examiner's Office.

The DCI report is included with the released records; however, the attached records, provided by the Milwaukee County 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 records would not be shared with any person outside the criminal investigation, and the medical examiner's office 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), there is a public interest in honoring the conditions under which the Milwaukee County Medical Examiner records were provided to DOJ and in cooperating with the Milwaukee County Medical Examiner 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 Milwaukee County Medical Examiner. 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 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. An excerpt from the medical examiner's records, quoted within DCI report number *19-5257/20*, was 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.

FBI numbers or information indicating whether or not FBI numbers exist was redacted pursuant to 28 C.F.R. §§ 20.21(c)(2) and 20.33, because disclosure of the existence or non-existence of FBI numbers impermissibly would indicate the existence or non-existence of federal criminal history.

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,



Paul M. Ferguson  
Assistant Attorney General  
Office of Open Government

PMF:hpw