



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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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 January 16, 2020 shooting by Marathon County Sheriff's Deputy Brandon Stroik and Lt. Steven DeNovi and Wausau Police Officers Shawn Pierschalla, Michael Horejs, and Benjamin Price, which resulted in the death of Jack D. Bolinger, has been prepared for release. The Marathon 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 **20-307 – Wausau 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 the DOJ Communications Office at dojcommunications@doj.state.wi.us.

Certain information was 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, these records were 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) balancing test was applied, and DOJ determined 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 in photographs and video of Mr. Bolinger at the crime scene, and during his subsequent autopsy, as well as graphic descriptions of Mr. Bolinger's 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.

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. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, these public policies requiring that crime victims be treated with respect for their privacy and dignity outweigh any public interest in disclosure of the names or other personally identifying information of these individuals where present within DCI case file records. 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.

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 family members, adult witnesses, 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 names of law enforcement officers and other public employees mentioned in the records were not redacted.
- The full names of juveniles.

The juveniles’ names were 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 juveniles' names. *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, images and audio captured by body cameras or civilian video, vehicle images and descriptions, license plates, home and personal cellular telephone numbers, social media profile photographs, and information regarding routine work hours and places of employment.
- Audio recording of the witness call to 911 and interviews.
- Certain video depicting areas of the interior of residences unrelated to the shooting incident.

This material was also withheld pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These images depict the interior of this private home and personal belongings of the home's residents. In performing the balancing test, DOJ determined 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.

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 were made from the records prior to release, for the reasons explained below.

Birthdates and driver's license numbers 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, 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, home telephone numbers, and personal cellular telephone numbers and access passcodes 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; *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.

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.* *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. General use, publicly available telephone numbers for the law enforcement agencies involved were not redacted from the records.

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

The street address for the offices where DCI agents work at confidential locations shared by undercover agents was 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.

Personal cell telephone International Mobile Equipment Identity (IMEI) and Electronic Chip Identification (ECID) numbers, which are economically valuable individually identifiable information, were 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 applying the balancing test, the public interest in protecting this economically valuable individually identifiable information from misappropriation or misuse outweighs any public interest in disclosure.

The name of the DCI special agent UAV pilot, which could be used to obtain individually identifiable information about this agent, was 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), DOJ determined the public interest in protecting the confidentiality of this individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of this information.

Information that reveals confidential forensic examination techniques and results was redacted from reports pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of such information could undermine law enforcement's ability to use investigative techniques, procedures, technology, and equipment to effectively investigate criminal activity. Public knowledge of the existence of, and the capabilities provided by, such technology and equipment could reveal sensitive capabilities possessed by law enforcement, which in turn might allow individuals who are the subject of investigation wherein the technology and equipment is used, to employ countermeasures to avoid detection by law enforcement. 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 promoting effective law enforcement investigations. *Cf.* Wis. Stat. § 19.31; *Cf. 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.

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 federal Health Insurance Portability and Accountability Act (HIPAA). 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).

Emergency medical services (EMS) personnel working with the Wausau Fire Department responded to the shooting scene to provide medical care for Mr. Bolinger. Specific information regarding their assessment and treatment of Mr. Bolinger, as observed or reported by the EMS personnel or other witnesses, 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.

A copy of the Wausau Fire Department Care Report contained within the DCI case file was redacted pursuant to Wis. Stat. §§ 256.15(12) and 146.82(5)(c). In applying the Wis. Stat. § 19.35(1)(a) balancing test, the 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.

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) 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.

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. 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 January 16, 2020 shooting incident were not redacted from the records.

As documented in the DCI case file, cell phone extractions, dispatch audio recordings, 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 material or material that does not contain scenes or information of investigatory interest are not included in this release. To review this material and apply any required redactions would require substantial staff time and resources and be overly burdensome. The public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530. DCI's review of these materials 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.

DCI report numbers **20-307/13, 36, 108, and 125** document DOJ's receipt of the preliminary and final autopsy reports and the toxicology records for Mr. Bolinger provided by the University of Wisconsin Hospital (UW Health Anatomic Pathology Lab) and NMS Labs, on behalf of the Marathon County Medical Examiner. The DCI reports are included with the released records; however, the attached records, provided by UW Hospital and NMS Labs, were wholly redacted from the release. Those records were provided to DOJ by the UW

Hospital and NMS Labs on the condition that the reports would not be shared with any person outside the criminal investigation, and the UW Hospital and NMS Labs would not provide the reports to DOJ without DOJ's agreement to those conditions. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, there is a public interest in honoring the conditions under which the UW Hospital and NMS Labs reports were provided to DOJ and in cooperating with the UW Hospital and NMS Labs 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 Marathon County Medical Examiner's Office, UW Hospital, and NMS Labs. The public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which the UW Hospital and NMS Labs provided the reports to DOJ, outweighs any public interest in disclosure by DOJ of the reports. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. Excerpts from the UW Hospital and NMS Labs records, quoted within DCI reports, were redacted for the same reasons. If desired, the records may be requested directly from the Marathon County Medical Examiner's Office records custodian.

Money transfer reference numbers were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public interest in protecting this kind of economically valuable information from misappropriation or misuse is recognized in Wis. Stat. § 19.36(13), which prohibits disclosure of the bank account numbers of individuals. Although Wis. Stat. § 19.36 may not apply directly to the reference numbers redacted from these records because they are not the account numbers of individuals, the same public interest in protecting financial transfer reference numbers from misappropriation or other misuse applies here. Therefore, DOJ determined that the public interest in protecting this economically valuable information from misappropriation or misuse outweighs any public interest in disclosure. *Cf. Wis. Stat. § 19.35(1)(a)*.

The Wausau Police Department computer server path name that appears in the CAD entries attached to DCI reports and the DCI-DFU computer path name that appears in a DFU cell phone analysis report were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of this highly sensitive information would substantially increase the risk of an intrusion into the departments' secure networks by unauthorized users. Such an intrusion could expose the work product of the departments' employees, law enforcement agents, and others to the risk of loss, destruction, or manipulation. Additionally, the digital information stored in the departments' computer systems and/or software programs include 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 departments' computer systems, the information electronically stored in them, and individuals' privacy information. The public interest in protecting the security of the server networks and computer systems—as well as personnel and other individuals—and the integrity and confidentiality of the data stored therein, and in ensuring that government can operate safely and effectively without disruption and unnecessary interruption outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 38; *see also Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶¶ 13, 18–19, 21, 372 Wis. 2d 460, 888 N.W.2d 584.

DOJ is not releasing records under court seal. *See* Wis. Stat. § 19.35(1)(a) (“Except as otherwise provided by law”); Wis. Stat. § 19.36(1); *see also* Wis. Stat. § 801.21. References to information that is contained in the records under court seal and which is prohibited from being released pursuant to the court’s order, was also redacted elsewhere in the records, pursuant to the court seal. *Id.*

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 "P.M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:hpw