



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 May 17, 2020 shooting by Oconto County Sheriff's Office Deputy Kevin Christensen and Sergeant Ben Schindel, which resulted in the death of Jacob Bubb, has been prepared for release. The Oconto 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 **20-3765: Oconto County SO OID - 2020**. 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 and audio recording 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 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 DOJ 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 graphic images of Mr. Bubb in photographs at the crime scene and during the subsequent autopsy, as well as descriptions of Mr. Bubb's injuries from reports. In performing the balancing test, DOJ also determined that the public interest in protecting the privacy of this family and in facilitating cooperation with law enforcement in sensitive investigations outweighs any public interest in disclosure of the described information. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶ 38, 254 Wis. 2d 306, 646 N.W.2d 811.

Certain witnesses in this investigation were crime victims. 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. 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. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined that 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 and other personally identifying information of these individuals where present within DCI case file records. Accordingly, the names, street address, license plate numbers, and Vehicle Identification Numbers of the individuals in whose home the incident took place were redacted from the reports prior to release. Please note that due to the high profile nature of the incident and the fact that the street on which the incident took place has been widely publicized, only the street number of the address and descriptions of the specific location have been redacted.

Furthermore, certain photographs and descriptions depicting areas of the interior of the residence, outside of which the shooting incident occurred, were partially or fully 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) balancing test, DOJ determined that the public interest in protecting the security of this residence, the safety of the individuals who live there, and the privacy of these individuals outweighs any public interest in disclosure of the redacted images and detailed descriptions.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the names of undercover law enforcement personnel were redacted. 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. Therefore, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined that 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.

Also pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined 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 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. *See also Wis. Stat. § 19.35(1)(a)*

(“exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access”); Wis. Stat. § 19.85(1)(f) (providing for an exemption to consider, in part, “the investigation of charges against specific persons ... which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person ... involved in such ... investigations”).

Therefore, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in law enforcement reports outweighs any public interest in information about the conduct of governmental affairs. Furthermore, DOJ 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. Accordingly, the following information was redacted from the records prepared for release:

- Names and nicknames of witnesses, family members of Mr. Bubb, others mentioned by individuals interviewed, and others mentioned in dispatch records unrelated to this investigation. (Names of some individuals have been redacted to first initials. Names of other individuals were redacted in full.) The last name of family members of Mr. Bubb was left unredacted if it was the same as Mr. Bubb’s. The names of law enforcement officers and other public employees mentioned in the records were not redacted, except as mentioned above.
- Other information that would identify the above individuals, including but not limited to: Dates of birth, home addresses (including images and descriptions of the home in which the incident took place), personal telephone numbers, images of witnesses, license plate numbers and Vehicle Identification Numbers for these individuals, along with information regarding routine work hours and details of employment.

Moreover, certain redacted information about collaterally mentioned individuals was based upon uncorroborated allegations and speculation. This information, which did not impact DCI’s investigation, could have a substantial adverse effect upon the reputation of the individuals if made public. Therefore, pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test, DOJ finds that the public interest favoring protection of individuals from reputational damage caused by unfounded allegations and speculation outweighs any public interest in disclosure of this uncorroborated information. *See also* Wis. Stat. § 19.35(1)(a) (“exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access”); Wis. Stat. § 19.85(1)(f) (providing for an exemption to consider, in part, “the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person . . . involved in such . . . investigations”).

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 social security numbers were redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. Pursuant to the Wis. Stat.

§ 19.35(1)(a) balancing test, DOJ determined 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 descriptive information identifying their exact location and floorplan, personal telephone numbers, personal electronic mail addresses, and personal photographs not relevant to the investigation were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. DOJ 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 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). DOJ finds 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.

Medical information and other personal information related to medical matters 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 DOJ finds 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).

A direct telephone number assigned to a specific law enforcement officer was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because the number is not made public and must remain confidential. DOJ finds that the strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of this direct telephone number of the law enforcement officer. Allowing the direct telephone number of the law enforcement officer to become publicly known would have an adverse effect on the officer's future ability to investigate criminal activity because the phone is 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.

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, their families, and their homes. DOJ finds that the public interest in protecting the security of the officers, their families, and their homes outweighs any public interest in information regarding their routine shifts. Details regarding the specific shifts

worked by the officers on the day of the May 17, 2020 shooting incident were not redacted from the records.

Law enforcement records regarding a juvenile and other juvenile offense information were redacted pursuant to Wis. Stat. § 938.396. To the extent such records and information are not directly governed by Wis. Stat. § 938.396, the records and information have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. § 938.396. DOJ finds 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. § 938.396 (“Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed” unless certain exceptions apply).

Serial numbers for a firearm and for two cellular telephones were redacted from the records. In applying the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined that the public interest in protecting the confidentiality and security of the property items and their current owners, preventing misuse of this potentially valuable identification information upon any subsequent disclosure, and encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters outweighs any public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32.

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, was 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.

Personally identifying information regarding scars, marks, and tattoos was redacted from criminal history reports to protect the privacy of those individuals. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), DOJ concluded that the public policy in favor of protecting the confidentiality of this personally identifiable information, which may have been obtained from patient healthcare records, outweighs any public interest in disclosure.

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

A state ID card number was redacted pursuant to Wis. Stat. § 343.50(8).

Username and online account password information was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect the privacy of an individual. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 25-26, 30, 41. Disclosure of the username and account password information would provide unauthorized access to accounts and could be subject to misuse upon any subsequent disclosure. In performing the balancing test, DOJ determined that the

public interest in protecting the security of account access outweighs any public interest in disclosure of this information.

Photographs of currency were redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Federal law prohibits the counterfeiting of United States securities, the uttering of and dealing in counterfeit securities, and the fraudulent using of paper as money or to procure something of value. *See* 18 U.S.C. §§ 471, 472, 473, 491. These federal statutes evidence the strong public interest in preventing any illegal counterfeiting and fraudulent activity that may arise from the use of photographs of currency. There is also a strong public interest in protecting economically valuable information from misappropriation or misuse, as evidenced by Wis. Stat. § 19.36(13). Disclosure of this information could also undermine or impair law enforcement's ability to prevent counterfeiting and fraudulent activities. Therefore, in applying the Wis. Stat. § 19.35(1)(a) balancing test, DOJ finds that the public interest in effective prevention of crime, and in protecting economically valuable information from misappropriation, misuse, or fraud, outweighs any public interest in disclosure of this information. *See* Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41; *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶¶ 13, 18, 21, 372 Wis. 2d 460, 888 N.W.2d 584.

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 were also redacted from the records.

Emergency medical services (EMS) personnel working with the Brazeau Ambulance Service responded to the shooting scene to provide medical care for Mr. Bubb. Specific information regarding their assessment and treatment of Mr. Bubb, as observed or reported by the EMS personnel, 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, DOJ finds 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 assessments and observations of Mr. Bubb by law enforcement, as reported by those on the scene or relayed by other law enforcement from those on the scene, and specific information regarding the treatment of Mr. Bubb by law enforcement, as reported by those providing the treatment, was 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 and the federal Health Insurance Portability and Accountability Act (HIPAA). DOJ finds 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 treatment information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of the redacted information.

DCI report number **20-3765/14** documents DOJ's receipt of the preliminary autopsy report and photographs for Jacob Bubb, provided by the Dane County Medical Examiner's Office. The DCI report was 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 Dane County Medical Examiner's Office on the condition that the report and photographs would not be shared with any person outside the criminal investigation, and the medical examiner's office would not provide the report and photographs 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 report and photographs 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 report and photographs would preclude future record sharing and significantly impair cooperative law enforcement efforts between DOJ and the Dane County Medical Examiner's Office. DOJ finds 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 report and photographs to DOJ, outweighs any public interest in disclosure by DOJ of the report and photographs. *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.

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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