



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) available investigative case file for DCI's investigation into the July 2, 2020, shooting by Sheboygan Police Officer Bryan Pray, which resulted in the death of Kevan Ruffin Jr., has been prepared for release. The Sheboygan County District Attorney 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 **20-5129: Sheboygan OID - Kevan Ruffin Jr.** That investigative case file has been reviewed in preparation for public release, and a copy of the available case file reports have 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 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 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 and descriptions of Mr. Ruffin Jr.'s injuries and condition at the incident scene from videos and reports.
- Graphic images of Mr. Ruffin Jr. taken during his autopsy.

- The voice of Mr. Ruffin Jr.'s mother during her calls to 911, and her full name where spoken by her or by the dispatcher.
- The full names of Mr. Ruffin Jr.'s family members. Family names were reduced to first initials only, except where they share the same last name as Mr. Ruffin Jr.

In performing the balancing test, DOJ 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 information. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 31, 38, 254 Wis.2d 306, 646 N.W.2d 811.

One witness in this investigation was a crime victim. 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. §§ 50.01 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 full names and other personally identifying information of these individuals where present within DCI case file records. Accordingly, the following information was redacted:

- The victim's full name and other personally identifying information was redacted from the reports, including but not limited to details about where the victim resides and the victim's physical description.
- The victim's image was redacted from video at the crime scene.
- The victim's voice was redacted where audible within video and audio recordings from the scene.
- The location of the victim during the incident was redacted from the reports.

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 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 also redacted from the records:

- Names of adult witnesses, and others mentioned in police reports. (First initials for the names of these individuals were not redacted.). The names of law enforcement officers and other public employees mentioned in the records were not redacted.
- Full names of juveniles mentioned. Well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. §§ 48.396 and 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. § 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 but not limited to dates of birth, home addresses, personal cell phone numbers, driver’s license numbers, employment information, and descriptions of vehicles.
- Names and voices of individuals in dispatch audio regarding unrelated 911 calls.
- The images and voices of witnesses from audio & video recordings.
- The Facebook account name, screen name, and profile name for a witness, along with a graphic video recording taken by this witness, as referenced in report /41.
- License plate numbers and vehicle identification numbers (VIN) for vehicles mentioned in reports and audio that are not related to the incident.

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 a law enforcement report 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, ¶¶ 31, 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 licenses 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 personal telephone numbers for citizens 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 determined 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. Where a listed address is not associated with a specific witness, such as in neighborhood canvassing or situational references, the address has not been redacted, in the interest of clarity.

Pursuant to the federal Driver's Privacy Protection Act (DPPA), which generally prohibits release of personal information and highly restricted personal information in response to a public records request, personal information and highly restricted personal information, as defined in DPPA, contained within DOJ records that was obtained from the 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.

State ID card numbers and images of state ID cards were redacted pursuant to Wis. Stat. § 343.50(8). To the extent this information is not directly governed by Wis. Stat. § 343.50(8), the information was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of information concerning or relating to an applicant or identification card holder is expressed in Wis. Stat. § 343.50(8). The same underlying public policy of protecting the confidentiality and privacy of such information and the public interest in the expectation of privacy on the part of individuals in their personal lives and in preventing the misappropriation or misuse of such information upon any subsequent disclosure outweigh any public interest in disclosure of this information.

Certain medical information and medical prescription information was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, although limited medical information directly relevant to the investigation has been released under Wis. Stat. § 175.47(5)(b). 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 determined 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).

Emergency medical services (EMS) personnel from the Sheboygan Fire Department responded to the scene to provide medical care for Mr. Ruffin Jr. Specific information regarding their assessment and treatment of Mr. Ruffin Jr., 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, DOJ determined 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. Ruffin Jr. by law enforcement, as reported by those on the scene or relayed by other law enforcement from those on the scene including in the audio portion of video recordings, 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 determined 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.

Specific information identifying routine shifts worked by EMS personnel was redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test in the interest of preserving the safety of the EMS personnel, their families, and their homes. In performing the balancing test, DOJ determined that the public interest in protecting the security of these EMS personnel, their families, and their homes outweighs any public interest in information regarding their routine work shifts. Details regarding the specific shifts worked by EMS personnel on the date of the July 2, 2020 shooting incident have not been 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 involved, those officers' families, and those officers' homes. Information revealing the locations of Officer Pray's education while he was a juvenile was also redacted, for the same reason. In performing the balancing test, DOJ 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 the routine shifts or juvenile education locations. Details regarding the specific shift worked by the officer involved in the July 2, 2020 shooting incident has not been redacted from the records.

Pursuant to the Wis. Stat. 19.35(1)(a) balancing test, a personal family photograph was redacted from images showing Officer Pray's work locker. There is a strong public interest in not disseminating an image that is personal to the officer's family and was not relevant to the shooting incident. Additionally, the release of this image could present safety concerns for Officer Pray and his family. Therefore, DOJ concluded that the public interest in protecting the safety of law enforcement personnel, their children, and their families

outweighs the public interest in disclosure of this image. The public interest in avoiding unnecessary intrusion into the personal lives of individuals and in protecting the privacy of these individuals also outweighs any public interest in disclosure of this purely personal information. *See* Memorandum from J.B. Van Hollen, Attorney General, to Interested Parties (July 28, 2010).

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the names of DCI special agents serving as pilots of unmanned aerial vehicles, which could be used to obtain home addresses and other personally identifiable information about these agents, were redacted to protect against identity theft or other unauthorized use following any subsequent disclosure, and to protect the security of the officers, the officers' families, and the officers' homes. 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). Therefore, in performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), DOJ determined that the public policies in favor of protecting the safety of the officers, as well as protecting the confidentiality of this personally identifiable information and preventing its misuse upon any subsequent disclosure, outweigh any public interest in disclosure of this information.

DCI report **20-5129/13** documents DOJ's receipt of the preliminary autopsy report, and DCI report **20-5129/46** documents receipt of the toxicology report, for Mr. Ruffin Jr. provided by the Sheboygan County Medical Examiner's Office. The DCI reports were 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 Sheboygan 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 report to DOJ without DOJ's agreement to those conditions. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined that there is a public interest in honoring the conditions under which the records 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 records would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and the Sheboygan County Medical Examiner's Office. Therefore, DOJ determined that the public interest in effective investigation of crime and effective law enforcement, which is furthered by honoring the conditions under which the Sheboygan County Medical Examiner's Office provided the reports to DOJ, outweighs any public interest in disclosure of the records. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39. Information or excerpts from the Medical Examiner's Office's records, quoted or summarized within DCI reports, were redacted for the same reasons. If desired, records from the Medical Examiner's Office may be requested directly from the Sheboygan County Medical Examiner's Office's records custodian.

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.

As documented in the DCI case file, surveillance video, squad video recordings, body camera recordings from the officers involved, the officers that arrived after the incident, and business surveillance video were collected by DCI for review. Due to space constraints, the large investigatory file, and the time necessary to review this material, not all video or the audit logs/spreadsheets documenting those items, is included in this release. DCI's review of the recordings from the officers involved is documented within the DCI case file and these videos (two squad camera recordings, two body camera recordings, and one surveillance video) are being produced for this release. Additional materials may be requested by specifying the report number. Such requests should be made through DOJ's public records request process and will be processed accordingly.

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,



Sarah K. Larson
Assistant Attorney General
Office of Open Government

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