



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 February 10, 2020 Brown County Jail in-custody death of Jason Robert Thomson, has been prepared for release. The Brown County District Attorney determined there is no basis to prosecute any of 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 **20-927 – Jason Robert Thomson Death**. 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 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. Thomson during transport to the jail, at the jail, and during his subsequent autopsy, as well as graphic descriptions of Mr. Thomson's medical condition.

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, ¶¶ 31, 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 death 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.
- Other information that would identify the above individuals including dates of birth, home addresses, and home and personal cellular telephone numbers.

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) 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 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. 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. Linzmeyer*, 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.

A credit card number, Wisconsin Quest card number, and insurance card number were redacted pursuant to Wis. Stat. § 19.36(13). To the extent this information is not directly governed by Wis. Stat. § 19.36(13), this information 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 policies as well as the 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. In applying the balancing test, 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.

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 Green Bay Fire Department responded to the residential shelter and the Brown County Jail to provide medical care for Mr. Thomson. Specific information regarding their assessment and treatment of Mr. Thomson, 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.

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 February 10, 2020 incident were not redacted from the records.

As documented in the DCI case file, dispatch audio recordings, squad video recordings, and security camera recordings from the hospital and jail 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 number **20-952/60** documents DOJ's receipt of the autopsy and toxicology records for Mr. Thomson, provided by the Brown 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 Brown 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 records 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 medical examiner's 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 Brown 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 Brown County Medical Examiner's Office 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. If desired, the medical examiner's records may be requested directly from the Brown County Medical Examiner's Office records custodian.

Internal Brown County Jail security video that depicts the non-public custodial/booking area of the jail and the bookings of unrelated individuals was withheld in order to protect the safety of law enforcement personnel and safeguard security at the Brown County Jail. The safety of law enforcement personnel and jail security would be compromised by public disclosure of this information. Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in protecting the safety of the law enforcement personnel and safeguarding security at the non-public areas of the jail outweighs the public interest in disclosure of this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 41; *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)(d) (providing for an exemption, in part, for "considering strategy for crime detection or prevention.").

Certain video that depicts areas of the interior of the St. John's residential shelter unrelated to the officer-involved incident were withheld in full. These images depict the interior of the shelter and the residents. In performing the Wis. Stat. § 19.35(1)(a) balancing test, the public interest in protecting the security of this residence, the safety of the people who live there, and the privacy of these individuals outweighs any public interest in disclosure of the redacted images.

Blueprints of the Brown County Jail that were provided to DCI and included within this DCI case file were redacted from the records produced for release pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy regarding the confidentiality of records containing plans or specifications for publicly owned or leased buildings is expressed in Wis. Stat. § 19.36(9). In applying the balancing test, DOJ determined the public interest in protecting the safety and security of the jail and the people who work, are housed, or visit there, as well as the public policies expressed in Wis. Stat. § 19.36(9), outweigh any public interest in disclosure of the blueprints.

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,



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Office of Open Government

PMF:hpw