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To Whom This May Concern:

The enclosed records have been prepared in response to numerous public records requests received by the Wisconsin Department of Justice for copies of records related to the investigation conducted by the Division of Criminal Investigation (DCI) into the February 24, 2015 shooting by Green Bay (Wisconsin) Police Officers Matthew Dunn and Brian Kreuger that resulted in the death of Joseph Biegert.

The DCI case in question is *15-963: Joseph Biegert Death*. That case file has been reviewed in preparation for public release, and a copy of the file has been made available 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).

Certain information has been redacted from the records, either because specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These redactions are described below. In addition, I have been mindful in preparing these records for release that the purpose of the Wisconsin public records law is to shed light on the workings of government and the acts of public officers and employees in their official capacities. *Building and Constr. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The public records law is not intended to provide the public with access to information that otherwise would be private or to provide a mechanism to satisfy public curiosity about matters that do not involve the operation of government.

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, I applied the Wis. Stat. § 19.35(1)(a) public records balancing test and determined that the public policies requiring that surviving loved ones of the deceased be treated with respect for their privacy and dignity outweighed any legitimate public interest in disclosure of the following information:

- graphic photographs taken of Joseph Biegert during his subsequent autopsy;
- graphic photographs taken at the scene of the shooting at 1511 Plymouth Lane; and

- personal information pertaining to Mr. Biegert and his family members, as well as the name of children mentioned in the investigative reports which were of no relevance to DCI's investigation.

In applying the balancing test, I found that the privacy interests of Mr. Biegert's surviving loved ones outweigh any public interest in disclosure of the graphic information described above, and therefore these photographic records and personal information have been redacted.

In preparing these records for release, I also determined by application of the public records balancing test 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 legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals referenced by witnesses. *Cf. Wis. Stat. § 19.31; Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis.2d 306, 646 N.W.2d 811. Due to the sensitive and sometimes controversial nature of officer-involved shooting incidents, public disclosure of the full names of 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 has been redacted from the records prepared for release:

- names of relatives, witnesses and other people mentioned by these individuals, with the exception of Mr. Biegert and his immediate family (first initials of first and last names were not redacted);
- the last names of Fred and Anthony mentioned by Mr. Biegert's family in the DCI reports and within the text messages;
- other information that would identify these individuals, such as dates of birth, address and telephone numbers, employment or schools attended;
- witnesses' personal information that was of no relevance to DCI's investigation ; and
- photographs depicting the interior of a witness's residence, release of which could jeopardize the security of the residence and the safety of the people who live there.

Specific information that describes the model, manufacturer, and serial numbers of weapons assigned to Green Bay Police Department law enforcement personnel, the numbers of rounds carried by officers, techniques used, and any photos revealing this information, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a). I determined that the public interests 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 used, outweighs any public interest in disclosure. *Cf. Wis. Stat. § 19.31; Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Content within the reports that reveals which personnel are assigned to specific positions on the Green Bay SWAT team, and days worked by law enforcement officers has also been redacted for the same reason.

Case reports 15-963/16 and 15/963/23 document interviews of Officer Brain Krueger and Officer Matthew Dunn, respectively. Both of these interviews were audio recorded; redacted versions of these two audio recordings have not been prepared for release at this time. These interviews were thoroughly summarized in the narrative portion of the related reports, as well as the transcripts provided by Green Bay

Police Department. The reports and transcripts are included with the records produced for release with minimal redactions made. In addition, the case report *15-963/22* documents an interview with Teri Biegert. This interview was also audio recorded. Once again, because DCI has thoroughly summarized the audio recording in a narrative portion of the related report with minimal redactions, the audio recording has not been prepared for release.

DCI case report *15-963/31* documents receipt and review of the digital forensic examination of Joseph Biegert's cellular telephone. This information has been provided to you as a PDF which has been redacted consistent with the explanations in this letter. Text messages in this record that do not pertain to the investigation have been redacted because they are not relevant to this investigation and release of this otherwise personal information would infringe upon the privacy rights of the victim and his family.

In addition to the previously identified redactions, certain other specific types of redactions have been made from the records prior to public release, for the reasons explained below.

Birthdates and driver's license numbers of individual persons have been 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), I concluded 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 outweighs any public interest in disclosure of the dates of birth, and driver's license numbers of individual persons. Birthdates of law enforcement officers and other public employees have been redacted pursuant to Wis. Stat. § 19.36(10)(a).

Home addresses and personal telephone numbers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public interest in disclosure of this information is outweighed by the expectation of privacy on the part of individuals in their personal lives and by the public interests 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. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31-32. One exception was made. The address where the shooting occurred, 1511 Plymouth Lane, Apartment E, has not been redacted because that address has been widely publicized, and pursuant to the balancing test I have determined that public interest in disclosure of that address outweighs the privacy interests of the landlord and tenants of that property. However, where investigators conducted interviews of neighbors in other apartments within the same apartment building, the apartment numbers of those interviewed have been redacted, to protect their privacy interests.

Personal information pertaining to the fitness center an officer attends and the towns the officers live in have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. I determined that the public interest in disclosure of this information is outweighed by the expectation of privacy on the part of officers in their personal lives, as well as the interests in protecting the safety of the officers and their families.

Wisconsin State Crime Laboratory records subject to Wis. Stat. §165.79(1) have been included in the "complete report" referenced in Wis. Stat. 175.47(5)(a). Such records are normally considered privileged and not available to persons other than law enforcement during the pendency of any related criminal case, subject to certain exceptions not relevant here. However, that privilege may be waived by the prosecutor and the department of justice, once the criminal proceedings have been terminated. *See* Wis. Stat. §165.79(2). Here, the district attorney has indicated that no charges will be issued as a result of this incident and both he and the department have waived the privilege for purposes of making them publicly available in the complete report. These records are being released in this instance because they

were integral to the findings contained in the summary report in that the DNA test results corroborated the officers' version of what had occurred.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test and in view of the strong public policies protecting the confidentiality of personal medical history information and the privacy rights of a deceased person's surviving loved ones, I have determined to release only portions of the pathologist autopsy report and the NMS toxicology report for Mr. Biegert. A summary of the autopsy produced by the pathologist and NMS lab is included within the related DCI report narrative, and a copy of the initial portion of the autopsy report and lab report itself is also included in the records prepared for release to you. In considering whether to release the remaining portion of these reports, I have weighed the existence of any reasonable public interest in disclosure of this information against the privacy rights of Mr. Biegert's surviving family members. *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004) (applying federal Freedom of Information Act to release of death scene photos, reasoning that invasion of family privacy is unwarranted where no significant public interest, "more specific than having the information for its own sake," would be advanced by release or likely to be advanced by release). Under these circumstances I have determined that the public interests in confidentiality of Mr. Biegert's private medical information and the privacy and dignity of his surviving loved ones outweighs any public interest in disclosure of the full reports.

Finally, it should be noted that a 1,475 page Motorola messaging report, provided by the Green Bay Police Department, contains agency messages for a two day period February 24, 2015 to February 25, 2015. The incident happened on February 24<sup>th</sup> at approximately 7:31p.m. Therefore, messages prior to a half hour before the incident are not being included. Within the 604 pages provided I have redacted names, addresses, phone numbers, and dates of birth of individuals unrelated to the incident. In performing the balancing test, once again I have determined that the public interest in disclosure of this information is outweighed by the expectation of privacy on the part of individuals in their personal lives and by the public interests 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. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 31-32.

The Department of Justice normally charges \$.15 per page and \$1.00 per disc for duplication of records provided in response to public records requests. Under Wis. Stat. § 19.35(3)(f), the Department is authorized to require prepayment by a requester of records of any fee or fees imposed if the total amount exceeds \$5. In this instance, however, our normal fees are being waived, 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