



DEPARTMENT OF POLICE

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To Whom It May Concern:

Pursuant to Wis. Stat. § 175.47(5)(b), a copy of investigative reports completed by the Milwaukee Area Investigative Team (MAIT), regarding the investigation into the November 5, 2017, death of Jamar Ferguson, has been prepared for release.

The West Allis Police Department was the lead investigating agency for this critical incident, overseeing the MAIT's investigation. The assigned West Allis Police Department case number is 17-44125. The case file has been reviewed in preparation for public release and a copy of the case file's reports and records have been made available online on the City of West Allis' website at: www.westalliswi.gov/mait.

Certain information has been redacted from the records or not provided at all, either because specifically required by law or pursuant to Wis. Stat. § 19.35(1)(a) balancing test. When performing the balancing test, I had to decide whether the strong presumption favoring disclosure was overcome by some even stronger presumption favoring limited access or non-disclosure. 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. See *Building and Constr. Trades Council v. Waukakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). As such, the following has been redacted or not provided:

Names, addresses, and other personal identifying information Mr. Ferguson's family members have been redacted from records.

- ❖ Well-established public policy recognizes the privacy rights of a deceased person's surviving loved ones. See *Cf. National Archives and Records Admin. v. Favish*, 541 U.S. 157, 168, 171-72 (2004). In performing the balancing test, I determined that the public interest in treating surviving loved ones of the deceased with respect for their privacy and dignity outweighed any legitimate public interest in the disclosure of this information.
- ❖ In performing the balancing test, I determined that the public interest in protecting this family, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of this information. See *Linzmeier*, 254 Wis. 2d 306, ¶ 38.

Names, addresses, and other personal identifying information of witnesses and others mentioned by individuals interviewed have been redacted from records.

- ❖ In performing the balancing test, I 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 these investigations outweighs any legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals referenced by witnesses. Wis. Stat. § 19.31; *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of these types of 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.

Birth date(s) of specific law enforcement officer(s) have been redacted from records.

- ❖ In performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of law enforcement officers mentioned in a law enforcement report outweighs any legitimate public interest in information about the conduct of governmental affairs. See *Hempel*, 284 Wis. 2d 162, ¶28, *Linzmeyer*, 254 Wis. 2d 306, ¶38
- ❖ This information has also been redacted to protect against identity theft or other unauthorized use.

Direct telephone number(s) assigned to specific law enforcement officer(s) have been redacted from records.

- ❖ In performing the balancing test, I determined that the strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of these direct telephone numbers of law enforcement officers. Allowing the direct telephone numbers of law enforcement officers to become publically 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. See *Linzmeyer*, 254 Wis. 2d 306 ¶¶ 30, 32, 39. General use, publicly available telephone numbers for the law enforcement agencies involved have not been redacted from the records.

Specific information identifying routine shifts worked by law enforcement officers has been redacted from records.

- ❖ In performing the balancing test, I 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 their routine shifts. See *Linzmeier*, 254 Wis. 2d 306, ¶ 38.

Social security number(s) have been redacted from records.

- ❖ Social security numbers obtained or maintained by an authority pursuant to a provision of 42 U.S.C. § 405(c)(2)(C)(viii)(I) are exempt from disclosure.
- ❖ This information has also been redacted to protect against identity theft or other unauthorized use.

Driver's license number(s) have been redacted from records.

- ❖ The Federal Driver's Privacy Protection Act (DPPA) (18 USC Wis. State Statute 2721) prohibits the disclosure of certain "personal information" or "highly restricted personal information" which originates from a State motor vehicle record. Under current controlling law, disclosure of each item "personal information" or "highly restricted personal information" must be justified by the specific permissible use identified below. Failure to provide such justification may result in redaction of the record requested. Such information shall not knowingly be disclosed or otherwise made available without the express consent of the person to whom the information pertains or unless specifically permitted by the DPPA.
- ❖ This information has also been redacted to protect against identity theft or other unauthorized use.

Date(s) of birth, Wisconsin CCW permit numbers(s), WI State identification number(s), FBI identification number(s), medical record identification number(s), account number(s) associated with customer accounts and financial institutions, license plate number(s), and Vehicle Identification Number(s) (VIN(s)) have been redacted from records.

- ❖ In performing the balancing test, I determined that the public policy in favor of protecting 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, outweighs any public interest in disclosure of the unique information of individual persons.
- ❖ This information has also been redacted to protect against identity theft or other unauthorized use.

Serial number(s) of firearm(s) have been redacted from records.

- ❖ In performing the balancing test, I concluded that public policy in favor of protecting confidentiality of this individually identifiable information outweighs any public interest in the disclosure of a firearms serial number. Furthermore, the nature of the Firearm

Owner's Protection Act (FOIPA), which amended 18 U.S. Code §§ 921 – 931, outlines protections of the owners of firearms.

Information about the victimization of an individual named in the case file has been redacted from records.

- ❖ State and federal law recognizes rights of privacy and dignity for crime victims and their families.
- ❖ The Wisconsin Constitution, art. I, § 9m, states that crime victims should be treated with “fairness, dignity, and respect for their privacy.” Wisconsin Stat. § 950.04(1v)(ag), (1v)(dr), and (2w)(dm) further emphasize the importance of the privacy rights of victims and witnesses.
- ❖ The Wisconsin Statutes recognize that this state constitutional right must be honored vigorously by law enforcement agencies. The statutes further recognize that crime victims include both persons against whom crimes have been committed and a deceased victim's family members. See Wis. Stat. § 950.01 and 950.02(4)(a).
- ❖ The Wisconsin Supreme Court, speaking of both Wis. Const. art. I, § 9, and related statutes concerning the rights of crime victims, 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.” See *2005 WI 17*, ¶ 26, *278 Wis. 2d 216*, *692 N.W.2d 623*.
- ❖ In performing the balancing test, I determined that the balance favors nondisclosure of the victim's identity and that the public's right to be informed of the affairs of government is outweighed by the victim's right to privacy. This is particularly so given the sensitive nature of the matter and potential for additional trauma to the victim if the identity is released.
- ❖ The increased level of embarrassment would have a chilling effect on future witnesses or victims coming forward.

Medical information contained within the records, including medications prescribed to individual(s) by a doctor, has been redacted from records.

- ❖ In performing the balancing test, I determined that the public interest in disclosure of personal medical information is outweighed by the public interest in the privacy on the part of individuals as it pertains to their personal medical history, as well as the privacy afforded to individuals by the Health Insurance Portability and Accountability Act (HIPAA).
- ❖ See Wis. Stat. § 146.82 Confidentiality of Patient Health Care Records.

Video of records from Wisconsin's TIME System, specifically one or more driving records and one or more criminal histories, has been redacted from records.

- ❖ According to the Wisconsin Department of Justice, *information contained in the various files available via the TIME System is for the use of law enforcement and criminal justice professionals for law enforcement and criminal justice purposes only. While some of the information contained in these files may be available to the public under applicable state laws, each TIME System agency is only authorized to release information from their own files. If a member of the public wishes to obtain information from one of the files they must contact the agency that owns the files, i.e., the Department of Transportation for driver's license information, the CIB for Wisconsin adult criminal history information, etc.*
 - **TIME System:** Wisconsin's computerized shared information system for local law enforcement agencies administered by the State of Wisconsin, Department of Justice-Criminal Information Bureau (CIB). The TIME system includes information from: Wisconsin Crime Information Bureau (CIB), FBI National Crime Information Center (NCIC), FBI Criminal Justice Information Services (CJIS), National Law Enforcement Telecommunication System (NLETS), National Insurance Crime Bureau (NICB), Canadian Police Information Centre (CPIC), Wisconsin Department of Transportation (WisDOT), Wisconsin Department of Natural Resources (DNR) and Wisconsin Department of Corrections (DOC).

Department of Justice – Bureau of Alcohol, Tobacco, Firearms, & Explosives – Firearms Trace Summary Record is not being provided.

- ❖ The summary record contains “Controlled Unclassified Information.” Per 32 CFR Part 2002, this record is exempt from disclosure.

Search warrant 17SW3207, which was issued November 7, 2017, is not being provided.

- ❖ An Order to Seal the search warrant was issued on November 7, 2017. A Motion to Extend and Refresh the Seal was issued on February 6, 2018.

One hundred twenty-seven (127) photographs of Mr. Ferguson's deceased body are not being provided. Thirty-nine (39) of these photographs were taken at Aurora Sinai Hospital while eighty-eight (88) of these photographs were taken at the Milwaukee County Medical Examiner's Office.

- ❖ Disclosure of the photographs would invade the privacy interests of the family of the deceased. Public disclosure of the photographs may prolong the period of grief and mourning experienced by the family and friends of the deceased and may cause them to suffer additional distress and emotional harm or embarrassment.

- ❖ Members of the general public who become witnesses to such events in the future may be unwilling to cooperate with authorities given the intense media coverage brought about by the publication of such photographs.
- ❖ Witnesses and family members might be encouraged, in similar cases in the future, to alter crime scenes by covering the deceased with a blanket or tarp (introducing extraneous physical evidence such as fibers, etc.) and some may be inclined to alter the appearance of the victim.
- ❖ Information sought relative to the death of the victim may be acquired through other less intrusive means, including the written police report. Photographs of the scene of death and/or an autopsy of the victim have the purpose of aiding in the investigation into the matter, however the content and imagery is vivid and shocking. The photographs merely depict the same information that is contained in the written reports relative to the investigation.
- ❖ Public release of the photographs of the scene of death and/or autopsy of the victim runs counter to preserving, to the highest extent possible, the dignity of the deceased.
- ❖ Release of the photographs would not appear to advance the interests of the public records law in any way. The photographs do nothing to inform the electorate, to promote better self-governance or to benefit the administration of justice; nor do they concern official acts of government employees. There appears to be no or very little general public interest in disclosing this information.
- ❖ The United States Supreme Court has held, in a case under the Freedom of Information Act, that a decedent's family's privacy interest outweighed the public interest in disclosure. *National Archives v. Favish*, 541 U.S. 157.

Video/audio of the interior of the Bell Ambulance that transported Mr. Ferguson to Aurora Sinai Hospital is not being provided. Conversations about individual medical treatments/medical history as well as actual individual medical treatment are present in the video/audio.

- ❖ In performing the balancing test, I determined that the public interest in disclosure of personal medical information is outweighed by the public interest in the privacy on the part of individuals as it pertains to their personal medical history, as well as the privacy afforded to individuals by the Health Insurance Portability and Accountability Act (HIPAA).
- ❖ Disclosure of the video/audio would invade the privacy interests of the family of the deceased. Public disclosure of the video/audio may prolong the period of grief and mourning experienced by the family and friends of the deceased and may cause them to suffer additional distress and emotional harm or embarrassment.

- ❖ Release of the video/audio would not appear to advance the interests of the public records law in any way. The video/audio do nothing to inform the electorate, to promote better self-governance or to benefit the administration of justice; nor do they concern official acts of government employees. There appears to be no or very little general public interest in disclosing this information.
- ❖ The United States Supreme Court has held, in a case under the Freedom of Information Act, that a decedent's family's privacy interest outweighed the public interest in disclosure. *National Archives v. Favish*, 541 U.S. 157.
- ❖ See Wis. Stat. § 146.82 Confidentiality of Patient Health Care Records.

Video/audio of the Aurora Sinai Hospital Emergency Room is not being provided. Individuals not related to this investigation are present in the video/audio. Conversations about individual medical treatments/medical history as well as actual individual medical treatment are present in the video/audio.

- ❖ Access to the Aurora Sinai Hospital Emergency Room has restricted access.
- ❖ In performing the balancing test, I determined that the public interest in disclosure of personal medical information is outweighed by the public interest in the privacy on the part of individuals as it pertains to their personal medical history, as well as the privacy afforded to individuals by the Health Insurance Portability and Accountability Act (HIPAA).
- ❖ Disclosure of the video/audio would invade the privacy interests of the family of the deceased. Public disclosure of the video/audio may prolong the period of grief and mourning experienced by the family and friends of the deceased and may cause them to suffer additional distress and emotional harm or embarrassment.
- ❖ Video/audio of some medical treatment, such as CPR, is vivid and can be shocking to some.
- ❖ Release of the video/audio would not appear to advance the interests of the public records law in any way. The video/audio do nothing to inform the electorate, to promote better self-governance or to benefit the administration of justice; nor do they concern official acts of government employees. There appears to be no or very little general public interest in disclosing this information.
- ❖ The United States Supreme Court has held, in a case under the Freedom of Information Act, that a decedent's family's privacy interest outweighed the public interest in disclosure. *National Archives v. Favish*, 541 U.S. 157.
- ❖ See Wis. Stat. § 146.82 Confidentiality of Patient Health Care Records.

Wis. Stat. § 19.35 (4)(b) requires that you be informed this determination is subject to

review under Wis. Stat. § section 19.37 (1). You may bring an action for mandamus asking for a court to order release of the records or request the District Attorney or Attorney General to bring an action for mandamus asking a court to order a release of the records. The Milwaukee County District Attorney's office is located at 949 N. 9th St., Milwaukee, WI, 53233. The Milwaukee County Children's Court Center is located at 10201 W. Watertown Plank Rd., Wauwatosa, WI, 53226. The State Attorney General's office is located at Wisconsin Department of Justice, 114 E. State Capitol, P.O. Box 7857, Madison, WI 53707-7857.

Sincerely,



Steven Beyer
Captain of Police
Administrative Services Bureau