



WEST ALLIS POLICE DEPARTMENT

Patrick S. Mitchell
Chief of Police

Christopher Botsch
Deputy Chief of Police

Robert Fletcher
Deputy Chief of Police

April 10, 2019

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 February 10, 2019, death of Ted Schmitz, 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 19-5427. 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 of Mr. Schmitz'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.



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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; *Linzmeier*, 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.

Information about the victimization of individuals and businesses 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.
- ❖ The increased level of embarrassment would have a chilling effect on future witnesses or victims coming forward.



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- ❖ 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.

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.

Account number(s) associated with customer accounts and financial institutions 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



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unauthorized use.

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.

Specific information identifying routine shifts worked by law enforcement officers and how they spend time in their personal lives 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 *Linzmeyer*, 254 Wis. 2d 306, ¶ 38.
- ❖ 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



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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 (FOPA), which amended 18 U.S. Code §§ 921 – 931, outlines protections of the owners of firearms.

Records from Wisconsin's TIME System, specifically one or more driving records and one or more criminal histories, has been redacted from records. Additionally, a 70-page document about Mr. Schmitz from Wisconsin's TIME System is not being provided.

- ❖ **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).
- ❖ 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.*

A shift schedule from the Waukesha County Sheriff's Office is not being provided.

- ❖ Public policies favor public safety and effective law enforcement. Public policies are against disclosure of law enforcement techniques and information that, if made public, could cause interference with police business.
- ❖ *Portage Daily Register*, 2008 WI App 30, ¶¶ 23-26.



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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

Steven Beyer
Captain of Police
Administrative Services Bureau