



## WEST ALLIS POLICE DEPARTMENT

Patrick S. Mitchell  
Chief of Police

Robert Fletcher  
Deputy Chief of Police

Christopher Marks  
Deputy Chief of Police

February 10, 2022

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 death of David Marshall Jr. on September 3, 2021, 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 21-30442. 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](http://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. Waukegan 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, phone numbers, and other personal identifying information of Mr. Marshall's family members and acquaintances 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 and businesses involved in these investigations outweighs any legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals or businesses 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 names and other identifying information for individuals interviewed or identified during the investigation 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. Also, I concluded that disclosure of this information sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. In addition, this information has also been redacted to protect against identity theft or other unauthorized use.

**Name (other than first initial of the first name), address, phone number, and other personal identifying information of the victims of alleged crimes have been redacted from records.**

- ❖ State and federal law recognizes rights of privacy and dignity for crime victims and their families.



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- ❖ 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 public interest in disclosure of this information is outweighed by the public interest in the privacy, reputation, and safety of the victims of alleged crimes. I concluded that disclosure of personal identifying information of victims sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. Furthermore, this information has been redacted to protect against identity theft or other unauthorized use.

**Names (other than first initial of the first name), addresses, phone numbers, images, and other personal identifying information of individuals and private businesses 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 and businesses involved in these investigations outweighs any legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals or businesses 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 names and other identifying information for individuals interviewed or identified during the investigation 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. Also, I concluded that disclosure of this information sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. In addition, this information has also been redacted to protect against identity theft or other unauthorized use.

**Names, addresses, phone numbers, and other personal identifying information of juveniles as well as information about a juvenile arrest record have been redacted from records.**

- ❖ See Wis. Stat. § 48.396 and 938.396.
- ❖ 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 and businesses involved in these investigations outweighs any legitimate public interest in disclosure of identifying information that could identify witnesses and other individuals or businesses referenced by witnesses. Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d



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306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of these types of incidents, public disclosure of the names and other identifying information for individuals interviewed or identified during the investigation 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. Furthermore, I determined that the public interest in disclosure of this information is outweighed by the public interest in the privacy on the part of juveniles. Also, I concluded that disclosure of this information sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. In addition, this information has also been redacted to protect against identity theft or other unauthorized use.

### **Individual medical/psychiatric information has been redacted from records or is not being provided.**

- ❖ In performing the balancing test, I determined that the public interest in disclosure of this 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). In addition, this information has also been redacted to protect against unauthorized use.
- ❖ See Wis. Stat. § 146.82 Confidentiality of Patient Health Care Records.

### **Work schedules of law enforcement officers 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, *Linzmeier*, 254 Wis. 2d 306, ¶38. In addition, this information has also been redacted to protect against unauthorized use.

### **Unique employee numbers of law enforcement officers, which correspond with payroll records as well as computer user accounts and other employment records, 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, *Linzmeier*, 254 Wis. 2d 306, ¶38. Also, disclosure of this information sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. In addition, this information has also been redacted to protect against identity theft or other unauthorized use.

### **Unique identifying numbers, like serial numbers, 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. §



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801.19, 801.20, and 801.21, outweighs any public interest in disclosure of the unique information of individual persons. Also, disclosure of this information sheds very little, if any, light on the workings of government and the acts of public officers and employees in their official capacities in this incident. This information has also been redacted to protect against identity theft or other unauthorized use.

- ❖ Additionally, in reference to firearm serial numbers, 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.

**The description of a vehicle(s) used in undercover law enforcement operations has been redacted from records.**

- ❖ In performing the balancing test, I determined that the public interest in disclosure of this information is outweighed by the public interest in the safety of law enforcement officers and the public interest in effective law enforcement. Such information, if made public, could endanger undercover officers and/or cause interference with law enforcement business. Furthermore, this information has been redacted to protect against identity theft or other unauthorized use.
- ❖ *Portage Daily Register*, 2008 WI App 30, ¶¶ 23-26.

**Reports (pages) from the Federal Bureau of Investigation (FBI) are not being provided. The reports detail victim and witness statements.**

- ❖ The reports contain the following disclaimer: *This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.*
- ❖ West Allis Police Department policy reads: *Copies of medical reports or other information generated by other agencies, organizations, businesses, etc., are not to be furnished. If these documents are requested, the requesting person should be referred to the holder of the original documents to obtain any copy he or she may need.*

**To reduce confusion for those who review the case file, but may not understand the FBI's National Incident-Based Reporting System (NIBRS), the label of *offender* has been redacted from records when associated with a law enforcement officer who was found to be legally justified in using force.**

- ❖ The FBI's National Incident-Based Reporting System (NIBRS) captures details on each single crime incident—as well as on separate offenses within the same incident—including information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in crimes. The Wisconsin Incident-Based Reporting System (WIBRS) is the Wisconsin-specific version of the FBI's National Incident-Based Reporting System (NIBRS). In cases where a person(s) is considered to be legally justified in using force against another person under Wis. Stat. §938.48(1), and the person dies, as is true in this case, the person(s) using the force is considered an *offender* simply so that WIBRS can accurately capture details of the crime incident.

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



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mandamus asking a court to order a release of the records. The Milwaukee County District Attorney's office is located at 949 N. 9<sup>th</sup> 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,

A handwritten signature in blue ink that reads "Steven Beyer".

Steven Beyer  
Captain of Police  
Administrative Services Bureau