



**CITY OF WAUWATOSA
POLICE DEPARTMENT**

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May 14th, 2020

To Whom This 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 December 15, 2019 shooting by law enforcement officers from the Milwaukee Police Department, which resulted in the death of Kean Walker, has been prepared for release. There were three involved officers who discharged their firearms during the incident.

The Wauwatosa Police Department was the lead investigating agency for this critical incident, overseeing the MAIT's investigation. The assigned Wauwatosa Police Department case number is **19-30952**. The case file has been reviewed in preparation for public release, and a copy of the case file's reports has been made available online on the City of Wauwatosa's website at www.wauwatosa.net/maif.

A video of the incident captured by the squad-mounted video camera of one of the Milwaukee Police squads involved in the incident has also been made available online in a Community Briefing released by the Milwaukee Police Department. It can be seen at <https://youtu.be/ClrYUxxxiw>. Additional video footage may be requested via the Open Records Request process.

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, we 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).

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, we applied the Wis. Stat. § 19.35(1)(a) public records balancing test and 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 the following information:

- Graphic images of Mr. Walker taken at the scene of the incident.
- Other graphic images taken at the scene of the incident.
- Autopsy photos of Mr. Walker.
- Addresses of Mr. Walker and his family members.

In performing the balancing test, we 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 the described records. *Linzmeier*, 254 Wis. 2d 306, ¶ 38.

In preparing these records for release, we 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. Wis. Stat. § 19.31; *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41. Due to the sensitive and sometimes controversial nature of officer-involved shooting 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 has been redacted from the records prepared for release:

- Names of adult witnesses, family members, and others mentioned by individuals interviewed.

Initials for the names of these individuals have been left unredacted. The names of non-undercover law enforcement officers and other public employees mentioned in the records are not redacted.

- Other information that would identify the above individuals.

Dates of birth, home addresses, home and personal cell telephone numbers, signatures, and places and/or regular hours of work for these individuals have been redacted.

- License plate numbers and Vehicle Identification Numbers (VIN's) of motor vehicles.

In performing the balancing test, we determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law enforcement report outweighs any legitimate public interest in information about the conduct of governmental affairs. Furthermore, we determined that the public interest in protecting the privacy of these individuals, and in facilitating cooperation with law enforcement in sensitive investigations, also outweigh any public interest in disclosure of this described information. *Linzmeier*, 254 Wis. 2d 306, ¶ 38.

In addition to the overall redactions set forth thus far, certain other specific types of redactions have been made from the records prior to public release, for the reasons explained below.

The serial numbers of firearms have been redacted to protect the privacy of firearms owners. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), we 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. In applying the public records balancing test, we determined that the public interest in the privacy rights of firearms owners outweighed the public interest in knowing the serial numbers of the firearms involved in this case.

Birthdates, driver's license/State ID numbers, social security numbers, and account or customer numbers with a financial institution 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), we concluded 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 dates of birth, driver's license/State ID numbers, or social security numbers of individual persons.

PeopleSoft personnel numbers for Milwaukee Police Department officers, which are analogous to social security numbers or other economically valuable individually identifiable information for these officers, 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), we concluded that the public policy in favor of protecting confidentiality of this 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 PeopleSoft numbers of individual law enforcement officers, as this information is both economically valuable and individually identifiable.

Medical information contained within the reports, including medications prescribed to individual(s) by a doctor, has been redacted from the released records. In applying the Wis. Stat. § 19.35(1)(a) balancing test, we 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).

Home addresses, home telephone numbers, and personal cell phone numbers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, we determined that 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, 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. *Linzmeier*, 254 Wis. 2d 306, ¶¶ 31-32. The addresses of where the incident occurred, as well as the addresses where investigators conducted interviews of neighbors in the area of the shooting have been partially redacted as to show only the hundred-block and street name. This disclosure will allow the public to know the general area where this incident occurred while protecting the privacy of the individuals who reside there.

Direct telephone numbers assigned to specific law enforcement officers have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because these numbers are not made public and must remain confidential. In applying the public records balancing test to these phone numbers, we concluded 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. *Linzmeier*, 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.

Law enforcement records regarding juveniles and children have been redacted pursuant to Wis. Stat. §§ 938.396(1) and 48.396(1). Well-established public policy recognizing the confidentiality of juveniles and children is expressed in the preceding statutes. We find that the same underlying public policy of protecting the confidentiality and privacy of juveniles and children outweighs any public interest in disclosure of the redacted information. *See* Wis. Stat. §938.396 ("Law enforcement agency

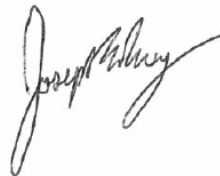
records of juveniles may not be open to inspection or their contents disclosed” unless certain exceptions apply), and Wis. Stat. §48.396 (“Law enforcement officers’ records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed” unless certain exceptions apply).

Specific information identifying routine shifts worked by law enforcement officers has been 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. In performing the balancing test, we 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.

The law permits the Wauwatosa Police Department 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), the Wauwatosa Police Department 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, the Wauwatosa Police Department is waiving its fees as they apply to these investigative reports regarding this officer-involved critical incident being made available online without any prepayment 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,

A handwritten signature in black ink, appearing to read "Joseph Roy", with a stylized flourish at the end.

Sergeant Joseph Roy
Wauwatosa Police Department
Administrative Bureau