



**CITY OF WAUWATOSA
POLICE DEPARTMENT**
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August 25, 2017

To Whom This May Concern:

Pursuant to Wis. Stat. § 175.47(5)(b), a copy of investigative reports completed by the Milwaukee County Investigative Team (MCIT), regarding the investigation into the March 16, 2017 shooting by law enforcement officers from three different agencies working as a task force under the High Intensity Drug Trafficking Areas (HIDTA) Program, which resulted in the death of Jermaine D. Claybrooks, has been prepared for release. There were six involved officers who discharged their firearms during the incident: one was employed by the Drug Enforcement Administration (DEA), two were employed by the West Allis Police Department, and three were employed by the Milwaukee Police Department.

The Wauwatosa Police Department was the lead investigating agency for this critical incident, overseeing the MCIT's investigation. The assigned Wauwatosa Police Department case number is **17-6753**. 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/police/mcit.

It is important to note that there was no video captured of the events that led up to the shooting incident, nor the shooting incident itself. Due to the undercover nature of their assignments, none of the police officers at the scene were wearing body cameras, and none of the police vehicles (which were all undercover vehicles) were equipped with video cameras.

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. Waukakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

Wisconsin courts have recognized personal safety as a strong public policy reason that may justify nondisclosure of a record or portion of a record. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 38, 254 Wis. 2d 306, 646 N.W.2d 811; *Klein v. Wisconsin Res. Ctr.*, 218 Wis. 2d 487, 496-97, 582 N.W.2d 44 (Ct. App. 1998); *State ex rel. Morke v. Record Custodian*, 159 Wis. 2d 722, 726, 465 N.W.2d 235 (Ct. App. 1990). The determination of whether a safety concern outweighs the presumption of openness must be made on a case-by-case basis. Upon review of these investigative reports, **I have redacted the names, titles, squad numbers, and other personally identifiable information of all undercover law enforcement officers**. Disclosure of the identity and assignment of law enforcement personnel, serving in an undercover capacity, would subject the undercover officer, and their family, to potential harassment and would additionally put their safety in jeopardy. The public interest in protecting the lives and safety of police officers who have worked or are presently working undercover outweighs the

public's right to know the names and assignments of those undercover officers. *Law Offices of Pangman & Assocs. V. Stigler*, 161 Wis. 2d 828, 840-41, 468 N.W.2d 784 (Ct. App. 1991). A public's "right to know does not extend to jeopardizing the lives and safety of its police officers." *Id.* at 841. In conducting the balancing test, officer safety is of "paramount importance." *Id.* at 840. When determining whether the public's interest in disclosure is outweighed by some other important policy reason, officer safety is not only "proper and compelling, *but controlling on this question.*" *Id.* at 841 (emphasis added). The court stated that certain information that might reveal the identity of undercover police officers is not subject to disclosure under the public records law.

The Wisconsin Supreme Court has ruled that the public interest in preventing the release of specific police and prosecution strategies and techniques being taught and used can outweigh the general presumption of disclosure under the balancing test. *Democratic Party of Wis. v. Wisconsin Dep't of Justice*, 2016 WI 100, 372 Wis. 2d 460, 888 N.W.2d 584. Upon review of these investigative reports, **I have redacted descriptions, accounts, and references to specific police strategies and techniques trained and utilized by the task force working under the HIDTA Program.** The court noted that if criminals learn the specific techniques and procedures used by police and prosecutors, they could use this knowledge to circumvent the law. *Id.* ¶ 19. The court further commented that there is a risk that specific techniques and strategies could instantly be disseminated over the internet and essentially serve as a textbook for criminals on how to avoid detection, elude capture, and escape conviction. *Id.* In rejecting the argument that some techniques and strategies may already be widely known, and often may be seen on television shows, the court stated, "[t]here is no rule of law protecting only brand new or novel prosecution techniques and police strategies, and there is no evidence that releasing local strategies will not lead to circumvention of the law simply because they are also seen on television crime shows." *Id.* ¶ 21. The court pointed out that although criminals may know in general terms various techniques used by police departments across the country, the specific techniques used by police officers in a particular jurisdiction or geographic area are not necessarily a matter of public knowledge. *Id.* "A criminal who knows the specific techniques being used locally is much more likely to evade capture than a criminal who, after viewing a crime show, guesses at what techniques location police and prosecutors are using." *Id.* In performing the balancing test, I determined that the public interest in preventing criminals from gaining knowledge to circumvent the law and elude capture, thus enhancing public safety, outweighs any legitimate public interest in the disclosure of the specific law enforcement strategies and techniques. *Linzmeyer*, 254 Wis. 2d 306, ¶ 32.

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

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 the described records. *Linzmeyer*, 254 Wis. 2d 306, ¶ 38.

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. Wis. Stat. § 19.31; *Linzmeyer*, 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, I 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, I 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. *Linzmeyer*, 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), 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. In applying the public records balancing test, I 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.

Wisconsin public records statutes specifically exempt from disclosure any record containing personally identifiable information that, if disclosed, would identify a confidential informant. Wis. Stat. § 19.35(1)(am)2.b. Under this statute, I have redacted all information that would reveal the name, sex, race, age, date of birth, address, phone number, or any other personally identifiable information that would reveal the identity of a confidential informant. Furthermore, the strong public interest in investigating and prosecuting criminal activity, protecting the integrity of current and associated investigations, protecting the livelihoods and security of individuals who cooperate with law

enforcement, protecting law enforcement sources, and encouraging citizens to cooperate with law enforcement investigators in providing information essential to investigating potential criminal activity outweighs any public interest in releasing personally identifiable information of a confidential informant.

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), I 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), I 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 PeopleSoft numbers of individual law enforcement officers.

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, 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).

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, I 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. Two exceptions were made. First, the address of the scene where the officer-involved shooting occurred has not been redacted because that address has been widely publicized, and pursuant to the balancing test, I determined that the public interest in disclosure of that address outweighs the public interest in the privacy of the resident. However, that resident's personal information has been redacted as to being identified as the resident of that address. Second, the addresses of 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 because the reports make clear that this was a neighborhood canvass of addresses in the vicinity.

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, I 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.

License plate numbers and Vehicle Identification Numbers (VIN's) of undercover law enforcement motor vehicles have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test because revealing these numbers would inhibit law enforcement in their future use of these vehicles and vehicle license plates in law enforcement operations. In applying the public records balancing test, I determined that the public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of these license plate and VIN numbers. Allowing the public to know which vehicles and vehicle license plates are being used in law enforcement operations, specifically undercover operations, would jeopardize the effectiveness of criminal investigations and prosecution. *Linzmeier*, 254 Wis. 2d 306 ¶¶ 30, 32, 39.

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. I 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, 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.

The investigative reports include the names and other identifying information of U.S. Department of Homeland Security agent(s). Wauwatosa Police consulted with the U.S. Department of Homeland Security (DHS) about the disclosure of the names of its personnel because of the ability of Wauwatosa Police and other members of the MCIT to work effectively with the DHS on future law enforcement matters requires us to respect requested confidentiality regarding federal agents and other identifying information. The DHS advised us that DHS's "Touhy regulations" (found at 6 C.F.R. § 5.41-5.49) prohibit the release of personal information when it could reasonably be expected to constitute an unwarranted invasion of personal privacy. In addition, the Freedom of Information Act (FOIA) contains exemptions, specifically Exemption 6, protects information that would constitute a clearly unwarranted invasion of personal privacy of the individuals involved. i.e., Social Security Numbers, home addresses and telephone numbers, certain identifying information regarding Department employees. Exemption 7, Protects records or information compiled for law enforcement purposes the release of which could reasonably be expected: 7(C) to constitute an unwarranted invasion of the personal privacy of a third party/parties (in some instances by revealing an investigative interest in them), i.e. identifying information of individuals associated with a law enforcement proceeding; i.e. law enforcement office's names, witness/interviewee identifying information; and 7(F) to endanger the life or physical safety of an individual, i.e. identifying information of law enforcement officers. In performing the Wis. Stat. §

19.35(1) balancing test, I determined that the underlying public interest in effective law enforcement and safety of federal DHS agents outweighs the public interest in disclosure of this information.

Records of computer forensic analysis of the contents of a cell phone were redacted pursuant to the Wis. Stat. § 19.35(1) balancing test. Disclosure of these computer forensic analysis records would disclose details of law enforcement investigative techniques that would lose their effectiveness and facilitate circumvention if disclosed to the public. Therefore, I concluded that the public interest in effective investigation and prosecution of crime outweighs any public interest in disclosure of the redacted cell phone forensic analysis records. *Linzmeier*, 254 Wis. 2d 306, ¶¶ 30, 32, 39, 41; *Democratic Party of Wisconsin*, 372 Wis. 2d 460, ¶¶ 13, 18, 21.

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 'Katie Gierach', written in a cursive style.

Sergeant Katie Gierach
Wauwatosa Police Department
Administrative Bureau