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July 20, 2022

**Re: Explanatory Memorandum Concerning the Initial Release of Police Body Camera Footage and Police Reports Related to the Racine Police Department's Officer Involved Shooting of Da'Shontay King**

In response to several public records requests received by the City of Racine ("City"), a copy of the Racine Police Department's ("RPD") police reports, other written documents, and key body camera footage related to the May 20, 2022 officer involved shooting of Da'Shontay King ("Mr. King") have been prepared for release to the public.

The body camera footage included in this initial release contains the footage of Mr. King retrieving a weapon from his waistband causing RPD Officer Zachary Brenner to discharge his service weapon, along with the majority of the body camera video showing the RPD's response to the scene and the subsequent initial securing of the scene. The Racine County ("County") District Attorney determined there is no basis to prosecute the law enforcement officer involved.

Additional records, consisting of photographs, additional body camera video showing crowd control efforts and footage from the hospital, squad camera video, and audio files will be forthcoming in a subsequent release, as these files take longer to process for release. It is estimated that these additional files will be released in August 2022. This memorandum has been prepared to explain the legal justifications for the redactions the RPD made to the body camera video being released today and police reports associated with the officer involved shooting incident.

The RPD case in question is 22-019620. The police reports and other written documents from this investigative case file have been reviewed in preparation for public release and a copy of the case file reports has been made available online via a link on the RPD's website.

Certain information has been redacted from the records, either because redaction is specifically required by law or pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test. These redactions and the reasons therefore are described below. In addition, the RPD has 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 official acts of public officers and employees. *Building and Const. Trades Council v. Waunakee Comm. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998).

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In preparing these records for release, the RPD 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 public interest in disclosure of information that could identify witnesses and other individuals referenced by witnesses. *C.f.* Wis. Stat. § 19.31; *Linzmeier v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis.2d 306, 646 N.W.2d 811. Due to the sensitive and sometimes controversial nature of officer-involved shootings, 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 prior to release:

- The names of adult witnesses, certain members of Mr. King's family, and the name of an individual initially misidentified as the deceased.
- Information that would identify the above individuals, such as dates of birth, home addresses, and personal telephone numbers.
- The date of birth, home address, personal telephone number and other personal information belonging to the deceased.

In performing the balancing test, the RPD determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in a law enforcement report outweighs any public interest in information about the conduct of governmental affairs. Furthermore, the RPD determined that the public interest in protecting the privacy of these individuals, and in facilitating cooperation with law enforcement in sensitive investigations, also outweighs any public interest in disclosure of this described information. *Cf.* *Linzmeier*, 2002 WI 84, ¶ 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.

A credit card found at the scene was redacted to prevent the release of banking information pursuant to Wis. Stat. § 19.36(13).

Birthdates and state-issued identification numbers of individual persons, including the decedent, along with serial numbers of weapons and other property, 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), the RPD concluded that the public policy in favor of protecting the confidentiality of the economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure, as well as the public policies outlined in Wis. Stats. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure of this information.

Pursuant to the federal Driver's Privacy Protection Act ("DPPA"), which prohibits release of personal information and highly restricted personal information in response to a public records

request, personal information, as defined in the DPPA, which was obtained from the Wisconsin Department of Transportation Division of Motor Vehicles database and appears within the RPD's records, has been redacted. *See* 18 U.S.C. § 2721 *et seq.*; *New Richmond News v. City of New Richmond*, 2016 WI App 43, 370 Wis. 2d 75, 881 N.W.2d 339. These redactions include information such as individuals' driver's license number, license plate number, and VIN numbers.

Home addresses and personal telephone numbers for individuals, including the decedent, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, the RPD 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, protecting the sources of law enforcement information, and encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. *Cf.* Wis. Stat. § 19.31; *Linzmeier*, 2002 WI 84, ¶¶ 30, 32, 39, 41.

RPD employee cellphone screens showing personal contact information have been redacted. The RPD finds that the same underlying public policy of protecting the confidentiality and privacy of personal contact information outweighs any public interest in disclosure of this information. The non-public cell telephone numbers for 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. General numbers for law enforcement agencies are publicly available and have not been redacted. The RPD determined that the public interest in these individuals performing their job responsibilities without disruption and unnecessary interruption if their direct cell phone numbers became public knowledge outweighs any public interest in disclosure of the non-public cell phone numbers for these individuals. *Cf.* *Linzmeier*, 2002 WI 84, ¶¶ 30, 32, 39. Additionally, in applying the public records balancing test, the RPD determined that the strong public interest in effective investigation and prosecution of criminal activity outweighs any public interest in disclosure of the cell telephone numbers of law enforcement officers. Allowing the cell telephone numbers of law enforcement officers to become publicly 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. *Id.* Additionally, well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer's employees is expressed in Wis. Stat. § 19.36(10)(a).

Due to the incident occurring around shift change, many officers inadvertently discussed their childcare arrangements with one another while their body camera was recording. The RPD redacted information of a purely personal nature pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In performing the balancing test, the RPD determined that the public policy interest in avoiding unnecessary intrusion into the personal lives of individuals and protecting the privacy of these individuals outweighs any public interest in disclosure of this information. *See* Memorandum from J.B. Hollen, Wis. Attorney General, to Interested Parties (July 28, 2010).

Information identifying the number of rounds in a law enforcement officer's weapon, as well as the number of rounds in one or more additional magazines that a law enforcement officer carries on his or her person, have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing

test in the interest of preserving the safety of the officers. The RPD determined, in performing the balancing test, that the public interest in protecting the security of law enforcement officers and the members of the public whom they protect outweighs any public interest in information regarding the number of rounds being carried on a law enforcement officer's person. The RPD did not redact information related to the number of rounds fired by the law enforcement officer during the incident in question.

Redactions were made to information that would reveal the specific location and number of security cameras located on privately-owned homes. There is a public interest in encouraging private homeowners to assist in crime prevention and crime detection by using security cameras; however, the efficacy of these tools may be reduced when details about these security measures become known to the public. In performing the Wis. Stat. § 19.35(1)(a) public records balancing test, the RPD determined that the public interest in protecting the specifics of private citizen's security measures and theft prevention strategies, such as the location of security cameras, outweighed the public interest in receiving this information regarding the location and number of security cameras located in privately-owned homes.

Specific information regarding the medical treatment of the decedent and observations of that medical treatment have been redacted from the records pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of personal medical information is expressed in Wis. Stat. § 146.82. The RPD finds that the same underlying public policy of protecting the confidentiality and privacy of personal health information, as well as the analogous restrictions on release of patient information described under Wis. Stat. § 256.15(12), outweigh any public interest in disclosure of the redacted information.

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, the RPD 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 public interest in disclosure of graphic descriptions of Mr. King's injuries. Accordingly, graphic descriptions and depictions of the decedent's injuries have been redacted.

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 the Attorney General or District Attorney.

As stated at the outset of this memorandum, the foregoing information is applicable to the body camera footage currently being released and to the police reports and other written documents from the RPD's case file. Additional records, consisting of photographs, video, and audio files will be forthcoming in a subsequent release, as these files take longer to process for release. It is estimated that these additional files will be released in August 2022.