



Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, WI 53233
<http://www.city.milwaukee.gov/police>
Jeffrey B. Norman
Chief of Police
(414) 933-4444

October 10, 2023

WISN 12
Jennifer Fritz
759 N 19th Street
Milwaukee, WI 53233

Dear Jennifer Fritz:

This letter is in response to your records request dated July 4, 2023, in which you have made a request for records to the Milwaukee Police Department ("MPD"), pursuant to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31-39. Specifically, you have requested:

See Attached Request

The public policy in this state is to give the public the greatest amount of access to government records as possible. Wis. Stat. § 19.31. The general presumption is that government records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must "decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, § 28 (Citations omitted). Notwithstanding the presumption of openness, the public's right to access to public records is not absolute. *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

Upon inspection of our records, the records custodian has determined that the following items are responsive to your request:

- ~~1. 911 audio call~~
2. Body Worn Camera from PO Roach, PO Sheremeta and PO Bouzek
3. Interview of Michael Mattioli

Regarding your request for the interrogation video taken after the arrest of Michael Mattioli, Wisconsin law prohibits the release of "audio or audiovisual recording of a custodial investigation . . . before the person interrogated is convicted or acquitted of an offense that is the subject of the interrogation or all criminal investigations and prosecutions to which the interrogation relates are concluded." Wis. Stat. § 972.115(5). Therefore, we have withheld recordings of the custodial interviews of Michael Mattioli.

Per a Court Order from Wisconsin case 2020CV007144, images of Michael Mattioli and his voice have also been redacted. In the Order, the Court indicated that it was concerned with the potential damaging effect publication of Mr. Mattioli's image and statements would have on his ability to get a fair trial if the records were released, and ordered that that information be redacted prior to the release of these records. A copy of the Order is on file with the Open Records Division and can be provided on request.

We have also redacted birth dates from the requested audio and video records. Access to an individual's name with their date of birth, if released to the public could lead to the crime of identity theft. Identity theft is becoming one of the fastest growing areas of crime in the United States. Because of the growing frequency of identity theft, Congress created a federal offense for identity theft, which, in most circumstances, carries of minimum term of 15 years imprisonment, a fine, and criminal forfeiture of any personal property used or intended to be used to commit the offense. 18 U.S.C. § 1028(a)(7). The Wisconsin Legislature has also recognized identity theft as sufficiently prevalent to create a similar crime of identity theft. Wis. Stat. § 943.201. Identity theft could be accomplished through access to names with home addresses and dates of birth. The above-referenced statutes represent the Legislature's recognition of a strong public policy in protecting citizens against the crime of identity theft.

Images of the screens of in-squad computers have also been blurred out, pursuant to the balancing test, as disclosure of the contents of the screen would identify confidential law enforcement information, strategies and tactics. The public records law states that the exemptions found in the open meetings law may be used as an exception to disclosure under the Public Records Law if supported by public policy reasons. Wis. Stat. § 19.35(1)(a). One exception under the Open Meetings Law, which we have analyzed in our application of the balancing test, is when the information related to the consideration of strategies for crime detection or prevention. See Wis. Stat. § 19.85(1)(d). This exception evidences a public policy in favor of keeping certain strategies for crime detection and prevention confidential.

Though FOIA does not apply to the state of Wisconsin, Wisconsin courts have relied on guidance from federal court analyses of FOIA interpretations, as persuasive authority, when making determinations on public records law exceptions. The Wisconsin Supreme Court has stated that the protections of police tactics found in the Federal Freedom of Information Act (FOIA) may provide a public policy reason, through the required balancing test, to limit disclosure of records that contain police tactics. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 32. In this instance, the provision we

analyzed was 5 U.S.C. 552(b)(7), which exempts law enforcement records from disclosure when:

[T]he production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, . . . , (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

Id. (quoting 5 U.S.C. 552(b)(7)). In this instance, the information on the screen would reveal information relating to other investigations, personal information of other individuals, and confidential law enforcement techniques and strategies. There is a public interest in keeping this information confidential. Disclosure would impact the Milwaukee Police Department's ability to detect crime, as public knowledge of what is displayed on the screen would have an impact on the Milwaukee Police Department's strategies, methods and investigative techniques. Such disclosure could seriously impair and handicap the ability of Police Officers to function in an effective and efficient manner. Put another way, "if local criminals learn the specific techniques and procedures used by police . . . the disclosed information could be used to circumvent the law." *Democratic Party of Wisconsin and Cory Liebmam v. Wisconsin Department of Justice and Kevin Potter*, 2016 WI 100, ¶19. Consequently, after conducting the required balancing test, we have determined that the balance weighs in favor of non-disclosure of the images of the computer screens identified above.

We have also redacted any reference to any and all employee home addresses, home email addresses, home/cell telephone numbers, and social security numbers contained in the requested records, pursuant to Wis. Stat. § 19.36(10)(a).

We have also redacted medical information shown or discussed in the requested records, pursuant to the balancing test. An individual's medical information is typically purely personal information. Further, the Wisconsin legislature has recognized, in several sections of the statutes, a very strong public policy interest in protecting the confidentiality of an individual's medical and health-related records as evinced in Wis. Stat. §§ 146.82(1), 51.30(2) & (4), 153.50 and 153.55. It is clear that the Wisconsin legislature has gone to great lengths to protect the confidentiality of these records, as records that reference an individual's health information are of a sensitive nature. Disclosure may also constitute an invasion of an individual's right to privacy under Wis. Stat. § 995.50. See *Woznicki v. Erickson*, 202 Wis. 2d 178, 185-86, 549 N.W.2d 699 (1996). Thus, it is in the public interest to carefully guard the confidentiality of records that reference an individual's medical information, and to prevent the erosion of the confidentiality protections. Additionally, the public records law states that the exemptions found in the Open Meeting Law may be used as an exception to disclosure under the public records law if supported by public policy reasons. Wis. Stat. § 19.35(1)(a). In this instance, we looked at Wis. Stat. § 19.85(1)(f), which provides an exception under the Open Meeting Law when a government body is considering the medical information of specific individuals. This exception would represent a public policy in favor of confidentiality in an individual's medical information. As a result, after conducting the required balancing test, I am convinced that the balance tips in favor of non-disclosure of confidential health-related information.

After carefully conducting the required balancing test, we have also determined that the balance tips in favor of non-disclosure of videos that are graphic and/or sensitive in nature, based on the public interest in protecting the privacy rights of the victims and witnesses of this incident, and in the public interest in preventing any re-victimization that could result from the disclosure of the certain graphic images. Article I, Section 9m of the Wisconsin Constitution, titled "Victims of Crime," recognizes certain rights of victims of crime. The Wisconsin Constitution provides that victims of crime are to be treated "with fairness, dignity and respect for their privacy." Wis. Const. art. I, § 9m. Chapter 950 of the Wisconsin Statutes also creates certain rights for victims and witnesses of crimes. The legislative intent of Chapter 950 was to ensure that "all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in [Chapter 950] to victims and witnesses of crime are honored and protected by law enforcement agencies; prosecutors and judges . . ." Wis. Stat. § 950.01. This portion of the Wisconsin Constitution was recently strengthened with the passage of Marsy's Law in 2020. Additionally, the Wisconsin Supreme Court has held that "justice requires that all who are engaged in the prosecution of crime make every effort to minimize further suffering by crime victims." *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17 ¶ 26, 278 Wis. 2d 216, 292 N.W.2d 623. This policy also extends to witnesses, as Wis. Stat. § 950.04(2w)(c) seeks to protect witnesses of crimes from "harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts." *Id.*

Additionally, the disclosure of graphic and sensitive images contained in the requested records could further cause a victim emotional and mental distress. This type of re-victimization is contrary to the strong public policy protecting the rights of victims, as established in the above-referenced sections of the Wisconsin Constitution, Wisconsin Statutes, and court decisions. If disclosed, it is possible that these videos will be shown on television or images will be published in the newspaper. Family and close relatives of the victims, as well as affected, will be re-victimized every time they inadvertently see the videos. The United States Supreme Court has ruled that the family members of a victim have personal rights of privacy under both common law and federal statutory law. *National Archives & Records Admin. v. Favish*, 541 U.S. 157 (2003). In that instance, the Court recognized that "(f)amily members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek according to the deceased person who was once their own." *Id.*; see also *Marsh v. County of San Diego*, 680 F.3d 1148 (9th Cir. 2012).

In this instance, there are graphic images and audio of a traumatic lifesaving event contained in the requested records that, if disclosed, would constitute an invasion of the right of privacy of the victim or the victim's family members. Wis. Stat. §§ 895.50, and 995.50. The public interest in the disclosure of these videos with audio is outweighed by the public interests in protecting the privacy and rights of crime victims and their families. It is further outweighed by the public interest in encouraging citizens to cooperate with law enforcement investigators without undue concern that their private lives will become public matters. See *Linzmeier*, 2002 WI 84, ¶¶ 31-32.

In certain instances, personal notes of officers appear on the body worn camera video footage. Please note that images of these notes have been blurred out, as personal notes are not "records" that are subject to disclosure under the public records law.

The requested video footage also contains an image of a record that was obtained from the Department of Justice's TIME system, which is only allowed to be used for law enforcement purposes. Records of this nature require certification to access, and MPD is not allowed to redistribute them. Disclosure of this record in violation of the DOJ's prohibition would preclude future information sharing and significantly impair cooperative law enforcement efforts with other law enforcement agencies. Put another way, if MPD releases these records, it may lose access to this database in the future, which is not in the public interest. As a result, the image has been redacted, pursuant to the balancing test. After weighing competing public policies, we determined that the public interest in ensuring law enforcement access to criminal history records and in MPD's ability to cooperate with other law enforcement agencies outweighs the public interest in disclosure of this information. *Id.*, 2002 WI 84, ¶¶ 30.

Lastly, MPD is also required to comply with the regulations and exemptions set forth in the Driver's Privacy Protection Act ("DPPA"). The DPPA prohibits the release and use of personal information, as defined in 18 U.S.C. § 2725(3), and highly restricted personal information, as defined in 18 U.S.C. § 2725(4), from state motor vehicle records without the express consent of the person to whom such information applies.

The DPPA defines personal information as follows:

(3) "Personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not five-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver status.

"Highly restricted personal information" is also defined:

(4) "Highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information; and

The record that you requested includes personal information obtained by the Milwaukee Police Department from the Wisconsin Department of Transportation, including driver's license numbers. Pursuant to the DPPA, the MPD is prohibited from redisclosing that personal identifying information, unless one of 14 enumerated exceptions applies. See 18 U.S.C. § 2721, *Maracich et al. v. Spears, et al.*, 133 S.Ct. 2191 (2013), *Dahlstrom v. Sun-Times Media, LLC*, 777 F.3d 937 (7th Cir. 2015), and *Senne v. Village of Palatine, Illinois*, 784 F.3d 444 (7th Cir. 2015). Thus, I have redacted this personal information from any responsive records.

The determinations above are subject to review by mandamus action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

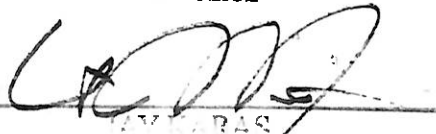
Sincerely,

JEFFREY B. NORMAN
CHIEF OF POLICE

JBN: JK: sw

#2314421 ORS Reference Number

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POLICE LIEUTENANT