



Madison Police Department

Michael C. Koval, Chief of Police

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April 3, 2015

All Requestors of Records related to Officer Kenny and/or the Officer Involved Shooting

To Whom It May Concern:

The Madison Police Department has received many requests for public records related to Officer Matt Kenney and the recent officer involved shooting. We respect the public's right to have access to the requested records "as soon as practicable and without delay", while at the same time recognizing that responding to the unique nature of each request would significantly delay our ability to respond to these requests in a timely manner. Therefore, the Madison Police Department has decided to expedite our response by consolidating all of the requests we have received and provide each requestor with the same responsive records. Records prepared for release will be posted to the **Madison Police Department** website, located at www.cityofmadison.com/police/newsroom/reports.cfm, as of Friday, April 3, 2015. The records posted will be composed of printed records only. There will be no fee associated with access to these records. For those requestors desiring a personal copy, these records will be made available through the Madison Police Department Records Bureau on a CD for a fee of \$15/CD. The Madison Police Department will also provide related audio/video records to those requestors seeking them for the cost of \$15/CD.

We are acutely aware of the intense public interest surrounding the death of Mr. Tony Robinson, the 2007 officer-involved death of Mr. Ronald Brandon and records pertaining to Officer Kenney himself. We are also sensitive to the concerns of the family, friends and for all those involved. We take our responsibility to respond to public records requests seriously and base all our decisions upon applicable state and federal laws, while balancing the public interests favoring release of these records against those public interests favoring non-disclosure of these records. The following is a comprehensive list of the records that have been requested:

- Reports for 2007 OIS incident (07-82098)
- Disciplinary file
- "dash video of 2007 OIS incident (07-82098)"
- "Personnel file" of Matt Kenny
- "copy of Officer Kenny's MPD record, including any commendations for and disciplinary actions against"
- Armed robbery/home invasion involving Mr. Robinson (14-123360)
- "Officer Matt Kenny's disciplinary record;
- all records pertaining to any court cases regarding Matt Kenny;

- all records pertaining to instances in which Matt Kenny employed force;
- all complaints filed against Matt Kenny"
- "citizen complaints, work evaluations, IA investigations and all pertinent documents related to Officer Matt Kenny"
- "Full MPD incident report on the shooting of Tony Robinson (15-71913)"
- "Full 911 March 6 call made by an individual who reported a disturbance involving Tony Robinson"
- All witness statements taken by MPD related to the shooting of Tony Robinson
- Statement from Officer Kenny on the shooting of Tony Robinson
- Officer Kenny's hospital record from the night of March 6
- Full incident report and complete witness statements from the 2007 fatal shooting of Ronald Brandon by Off. Kenny (07-82098)
- MPD Internal Affairs report on June 2007 fatal shooting of Ronald Brandon by Off. Kenny
- Officer Kenny's complete personnel file
- Tony Robinson's police file"
- "any records related to State of Wisconsin v Tony Robinson 2014CF000781"
- "copies of reports pertaining to a battery and strangulation involving Tony Robinson on the night of March 6"
- "personnel files for Police Officer Matt Kenny"
- "MPD contacts with Tony Robinson between Dec 18, 2014, and March 6, 2015"
- "requesting a copy of all your Use of Force policies and procedures"
- "records pertaining to any threats to officers/citizens regarding death of Tony Robinson. Copy of case # 15-73907 and any cases involving Tony Robinson where threats have been made and a report generated"
- "Police reports from the night of the shooting", "Any police calls to 1125 Williamson Street in the last two years",
- "Any prior police reports involving Tony Robinson"
- "This email is a formal request for a copy of any documents/records from Madison Police Chief Mike Koval Pertaining to individuals being allowed access to the City-County Building on the evening in which Tony Robinson was fatally shot"
- "a copy of Madison Police Department Case Number 15-72250"
- "Use of force training guide"
- "inspect or obtain copies of Officer Matt Kenny's entire personnel file"
"Records and information pertaining to any threats made to police or citizens regarding or that stem from the death of Tony Robinson. An electronic copy....of case #15-73907 and any like cases involving the Tony Robinson case where threats have been made.....and a report generated"

Under the Wisconsin Public Records Laws, records custodians must carefully weigh the competing public interests involved when deciding to release any record in their possession. Custodians begin with a presumption of complete public access to such records. However, custodians must consider whether statutes or common law prohibit the release of records and then, must consider whether inspection of the record could result in harm to the public interest that would outweigh the benefits of such inspection. When such harm substantially outweighs the benefits of public inspection, such records or portions thereof, must remain confidential.

Disciplinary Records & Complaints Filed Against Police Officer Kenny

No citizen complaints have been filed concerning Officer Matt Kenny therefore no such records exist.

Released with this letter is Officer Kenny's complete disciplinary file which is composed of a single letter of reprimand. Officer Kenny was provided the statutorily required notice of my intentions to release this record but consented to waive his statutory right to seek court review of my decision.

Police Officer Kenny Personnel & Medical Files

I am releasing some portions of Officer Kenny's personnel file but denying access to other portions. Pursuant to §19.36(10)(a), Wisconsin Statutes, I have redacted all City employee's home addresses, home electronic email addresses, home telephone numbers and social security numbers from these records. Pursuant to §19.36(10)(c) I am withholding "[i]nformation pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited."

Pursuant to sec. 19.36(10)(d), Wisconsin Statutes I am withholding all documents used by the department for staff management planning purposes including "...performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments...job assignments, letters of reference or other comments or ratings relating to employees" including the pre-employment investigation of Officer Kenny. Each of these items is a component of the examination process that candidates must complete as they continue through our hiring process. Not even the candidates themselves have access to most of this information. Our hiring process, to include all benchmarks and criteria used for rating purposes, has been standardized for many years. Releasing this information would compromise the integrity of future hiring processes.

Furthermore, the information obtained from pre-employment investigations was received after giving all interviewed parties complete assurance of confidentiality. If this promise of confidentiality were broken, and this information released, it is likely that people would be less than candid in their responses to our inquiries and thus, undermine our future hiring processes. If references provide overly positive and unrealistic assessments of applicants there is the distinct risk that less than qualified individuals could be hired as police officers.

Furthermore, it has been long recognized that the public disclosure of personnel evaluations would cause their authors to be less than candid about their conclusions thus rendering those evaluations useless. Therefore, personnel evaluations and supervisors' recommendations are also being withheld for the very same reasons set forth above and as set forth in the decision in *See State Ex. re; Journal/Sentinel, Inc. v. Arreola*, 207 Wis.2d 496, 514, 558 N.W.2d 670 (Ct. App. 1996).

I am also withholding Officer Kenny's confidential medical records in accordance with HIPAA and other state/federal laws that deem such medical records to be confidential. I am also withholding the paystubs and payroll deduction records for the purposes of preventing identity theft and in order to comply with various state and federal statutes regarding the confidentiality of such payroll and tax records.

Chief Koval Records: Citizen Access to City County Building

I am disclosing the entire record created by Chief Koval that is encompassed by the request for "a copy of any documents/records from Madison Police Chief Koval pertaining to individuals being

allowed to access the City-County building on the evening in which Tony Robinson was fatally shot” with only the redactions of personally identifiable information (PII) as explained below.

Use of Force Policy & Officer Kenny Use of Force Reports

I am providing a complete and unredacted copy of the MPD Use of Force policy that was in place on March 6, 2015. As a result of over a year long Department project, the new Code of Conduct and updated Standard Operating Procedures (SOP's), to include the Use of Deadly Force and Use of Non-Deadly Force SOP's, can be found at the Department's public webpage using the following links: <http://www.cityofmadison.com/police/documents/codeConduct.pdf> and <http://www.cityofmadison.com/police/chief/standardoperatingprocedures.cfm>.

I am also disclosing, subject to redactions of personally identifiable information and confidential juvenile records, all use of force reports completed by Officer Kenny starting in 2011 that were indexed and retrievable as such. In 2011, the Madison Police Department implemented an internal process in an attempt to collect use of force data. Police reports prior to that time are not indexed in a manner that provides for identification and retrieval of use of force incidents. In order to retrieve these reports the department would have to review each and every police report written by or mentioning Officer Kenny throughout the span of his career. That effort would be only compounded by the records requestors failure to identify what they consider encompassed in the term “use of force.” Such a term could run the spectrum from merely grabbing a person by the arm, to placing handcuffs on a person, to using deadly force. Thus, to attempt to retrieve all such use of force records for the entire span of Officer Kenny's tenure with the MPD amounts to an overly broad and unduly burdensome request.

Threats Against Police Officers and Others

I am enclosing copies of certain reports concerning recent threats made to, or concerning, police officers and others. Some of these reports have been redacted so as to remove identifying information of the persons of interest and/or the specific targets of such threats. Wisconsin Public Records laws prohibit the release of any records that if disclosed, would place any person in danger, disclose the identity of a confidential informant or that would compromise the rehabilitation of a prisoner. See sec. 19.35(1)(am)2., and 19.35(1)(am)2.d, Wis. Stats. Therefore, I have redacted the names and personal identifying information of the individuals identified in several of these records.

I have also withheld officer safety and criminal intelligence bulletins related to this topic. These documents possess preliminary information about potential threats and criminal activity the release of which could compromise officer safety and endanger lives. Furthermore, the release and publication of these records could disclose sensitive investigative strategies. Disclosing such information could also impede the cooperativeness of witnesses who may be reluctant to speak with the police if potential evidence is being reported in the media before the conclusion of the investigation. I am also concerned about the due process rights of the persons of interest and the targets of ongoing investigations who may have their reputations unduly tarnished if such records are released piecemeal to the public prior to the completion of an investigation. Additionally, I am persuaded by the public policy reflected in sec. 19.85(1)(e), Wis. Stats. that permits public bodies to meet in closed session to consider strategies for crime prevention and/or crime detection. This statute reflects the public policy that dissemination of the details of such crime prevention/detection strategies would be clearly contrary to the public's interests.

Reports Where Tony Robinson Is Named Therein

I am disclosing all but one of the records involving Tony T. Robinson created since he became an adult, subject to the redactions or exclusions identified below. I would normally withhold one particular record where a family member reported that Mr. Robinson may have been suffering from a momentary personal crisis. That incident occurred several months before the shooting. Public disclosure of this record could potentially undermine the important public policy of encouraging friends and family members to contact police concerning persons experiencing similar personal crises. However, when balancing the public interests in disclosure versus non-disclosure of records, I am obligated to consider the degree to which the contents of the records are already public knowledge. The contents of these records have been shared with the public by the family's attorney. Several news media outlets have reported extensively on the events memorialized in our records. Therefore, although the MPD had initially intended to withhold these reports, the MPD no longer has any viable basis for doing so.

The photo line-up from MPD case number 2014-123360 has had the identities obscured of persons not involved in the robbery so as to protect their privacy and to avoid public confusion. The persons depicted in these photos were never suspects in the robbery.

I am withholding a second record which involves unproven accusations leveled against several individuals identified therein. The information collected regarding the allegations of that record may not be accurate and therefore might render an unfair and inaccurate portrayal of these individuals through release of this information. There is little or no public interest in knowing the identities of the persons who may have been mistakenly, falsely or inaccurately accused of committing crime(s). However, there is a very strong public interest in avoiding unwarranted intrusions into the legitimate privacy interests and expectations of members of the public. Furthermore, disclosing such information could inhibit the cooperativeness of witnesses who may be reluctant to speak with the police if such unproven accusations can later be the subject of public records or news media disclosures. There is no doubt that some persons would use such opportunities to harm other individuals by filing police reports and then publish these accounts either in print media or the internet. Therefore, dissemination of such serious and unproven allegations would result in witnesses who are reluctant to cooperate in the department's investigations and thus undermine society's interests in solving crimes.

Allegations such as contained in these records, even where charges are never brought, tend to forever follow the person and may unfairly tarnish their reputations and standing. Such accusations are often accorded more "weight" when they are the subject of a police report. Therefore, the release of such, as yet, unfounded and unproven accusations may lead to reduced reporting and reduced public cooperation in the conduct of such investigations. Furthermore, such releases may encourage some persons to file false accusations for reasons of personal gain or revenge.

Investigation Of Officer Involved Shooting: Tony Robinson

This matter is currently being investigated by the Wisconsin Department of Justice Division of Criminal Investigation (DCI). All MPD reports completed under this and the related cases of that evening have been forwarded to the DCI for use in their investigation. Therefore, I am withholding records under MPD case No. 2015-71913 in their entirety.

If you are interested in obtaining records of the investigation of this officer involved shooting you should submit your request to:

**Mr. Kevin C. Potter
Office of the Attorney General
Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857**

Likewise, the Madison Police Department does not possess and is not a custodian of some of the medical records generated or created on or about March 6, 2015 that relate to Officer Kenny. The MPD possesses some medical records related to Officer Kenny, however, as set forth above, they are confidential medical records not subject to public records requests or analysis under both state and federal laws. See. Wis. Stats. §146.82 and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

To the extent that MPD officers may have completed police reports or other records, those records are part and parcel of the DCI investigation. Wis. Stats. §19.36(10)(b) prohibits the release of records relating to "...the current investigation of a possible criminal offense or possible misconduct connected with employment by and employee prior to disposition of the investigation." The release of these records would negatively affect important public interests in several ways. The release of such records could interfere with the ability to complete this investigation accurately, fairly and timely. For example, the release of detailed information in an ongoing investigation may influence witnesses' ability to recall key events and in some cases, may result in once cooperative witnesses becoming uncooperative as their information is publicly reported upon. Additionally, preliminary information collected in an investigation may be inaccurate and the reputations of persons unfairly and inaccurately portrayed by the release of such preliminary information. Finally, we cannot properly ascertain the various public interests weighing in favor and weighing against release of investigative records until the investigation has been completed, the conclusions have been reached and the total body of these records has been established.

Investigation Of Officer Involved Shooting: Ronald Brandon

I am releasing all of the reports regarding the officer involved shooting of Ronald A. Brandon with the following limitations and redactions. Due to the intricacies of posting audio/video files to our website, all audio/video records have been placed on compact disks. Copies are available by contacting me directly and paying the fees for reproduction of this media.

Requests for audio files of 911 calls regarding this incident may be made to the proper custodian of these records, the **Dane County Public Safety Communications Center**, at http://dane911.com/record_request.aspx.

I am withholding the portion of the squad cam video which depicts the actual moment of the shooting. I am withholding photographs depicting the body of Ronald A. Brandon that are contained in MPD Case Number 2007-82098. In weighing the public interests at stake in disclosure of these records I find that the public interests in protecting the privacy of surviving family members outweighs any public interest in reviewing these items. Courts have repeatedly recognized this balancing of public interests under similar public records statutes, see *National Archives & Records Admin. V. Favish*, 541 U.S. 157 (2003); *Campus Communications, Inc. v. Earnhardt*, 821 So.2d 388 (Fla. 5th DCA 2002). Furthermore, Wisconsin has enacted the Crime Victims Bill of Rights that mandates public officials respect and protect the rights of crime victims

and this Bill of Rights recognizes the societal policy of requiring that even government must respect the privacy and dignity of surviving family members even when their loss has been occasioned by an act that is of paramount public concern. Additionally, this balancing of public interests is recognized in sec. 69.20, Wis. Stats. as that statute prohibits public access to death certificate information identifying a decedent's cause of death and injuries.

I am withholding the Medical Examiner's report and certificate of death regarding Ronald A. Brandon. These documents were provided to the MPD as part of an investigative partnership with the Dane County Medical Examiner's Office with the understanding that the Medical Examiner's Office would be responsible for processing any public records requests for these materials. Additionally, if I were to make the redactions to these records as required by sections 69.18 and 69.20, Wisconsin Statutes, there would be little, if any, meaningful information left in the report to disclose. Reports concerning the autopsy of Ronald A. Brandon completed by the Madison Police Department have been redacted in accordance with State and Federal law referenced above.

To the extent that you desire to review the Medical Examiner's records, you should direct your request to official custodian for those records:

**Mr. Barry Irmen
Director of Operation
Dane County Medical Examiner's Office
115 W. Doty Street, Room 2144
Madison, WI 53703**

I am also withholding detailed reports of the in-depth interviews of Ronald Brandon's ex-wife and family members. These persons were initially interviewed at the scene of Mr. Brandon's demise. Those initial statements are included in this release of records. However, despite the trying circumstances, the family members agreed to participate in more in-depth interviews with MPD detectives. These family members were quite frank and cooperative during these in-depth interviews and provided detailed and highly personal information. The purpose of the public records laws is to provide the public with the information it needs to oversee the operation of its public employees. The Public Records Laws are not intended as a license to invade the privacy of surviving family members. There is a very strong public interest in avoiding unwarranted intrusions into the legitimate privacy interests and expectations of members of the public. Furthermore, disclosing such information could inhibit the cooperativeness of other similarly situated family members in future contacts if such persons must fear that whatever personal information they share with law enforcement officers will be shared with the world. Additionally, such disclosure could harm the public interests of seeing persons who have medical and mental health issues receive effective treatment if those close to them are afraid to bring their knowledge and observations to the attention of the proper authorities.

Vague, Overly Broad and Unduly Burdensome Records Requests

I am denying the various records requests that seek copies of every record "regarding", "relating to" or "pertaining to" Police Officer Kenny. These are problematic terms to employ in a public records request. Under the Public Records Laws the City is obligated to construe requests very broadly in favor of releasing all records relevant to the request. A record regards, relates or pertains to Police Officer Kenny if it merely mentions his name or affects his personal interests. For example, the collective bargaining agreements between the City and the Madison Professional Police Officers Association regard, relate or pertain to Police Officer Kenny. His pay stubs, payroll

deductions, leave requests, work schedules, medical records, squad car inspections forms, every police report he wrote or has been mentioned in would also be encompassed by these broad terms. Indeed, the Madison Police Department budgets regard, relate or pertain to this officer in so much as such budgets affect the resources available to members of the department. Thus, processing such requests would be a monumental undertaking with no discernible stopping point.

These requests are also problematic as to the large number of persons, communications and records that they encompass. Multiple City officers, public bodies and departments may hold records that regard, relate or pertain to this officer. Therefore, these requests, by their very terms, would require us to examine every email, memorandum, meeting notice, meeting agenda, meeting minutes, notes or files in the possession of these individuals, citizen committees and departments to determine whether they possess any responsive records. Indeed, some records are not even indexed in a manner that we can retrieve them as per the stated request. For example, one requester seeks "...all records pertaining to any court cases regarding Matt Kenny." Presumably, the requester is seeking cases that arise from Officer Kenny's employment with MPD and not any private litigation between Officer Kenny and others. But does that request seek records where charges were brought but settled short of trial or only those cases that went to trial? Is the request for cases where Officer Kenny was the arresting officer or any where he was merely named or mentioned in the reports? Does the request involve civil litigation, such as may arise between parties to a car accident that may have been investigated by Officer Kenny? Even if the request is restricted to only those criminal cases initiated by Officer Kenny, the fundamental problem with such a request is that the MPD does not track which cases end up in court action and which do not.

Additionally, these particular requests each lack any definite time-period as to which records are sought from. It is not my responsibility to speculate as to the time-period that the requesters are interested in obtaining records from. "A request for a record without reasonable limitation as to subject matter or length of time does not constitute a sufficient request...A request can be denied if it is too burdensome and the requester could have limited the request but failed to do so. Section 19.35(1)(h), Stats.; *Schopper v. Gehring*, 210 Wis.2d 208, 565 N.W.2d 187 (Ct. App. 1997)." Understanding the Wisconsin Public Records and Open Meetings Laws, State Bar of Wisconsin, December 1999. See also, *State ex rel. Gehl v. Connors*, 2006 WI App 2455.

I'm certain that the broad terms of these "regarding", "relating" or "pertaining to" requests would result in the collection of untold numbers of documents totally unrelated to any area of public interest. Processing such a broad and burdensome request would be inconsistent with the conduct of government business. Therefore, we are denying these requests for records that regard, relate to or pertain to Police Officer Kenny.

Confidential Juvenile Records

I am redacting the names and identifying information related to juveniles subject to court jurisdiction under either Chapter 48 or Chapter 938 of the Wisconsin Statutes. Furthermore, I am completely withholding any record of that is purely a juvenile matter under the Wisconsin Statutes in accordance with sections 48.396 and 938.396, Wisconsin Statutes. Such records are confidential and are not subject to public records requests or public inspection. One of those records involves an incident where Officer Kenny deployed but did not fire a Taser (MPD Case #2011-116864).

Those persons with section 48.396(1) or 938.396(1)(b)1., Wis. Stats. rights should contact me directly.

Personally Identifiable Information

I have also redacted specific personally identifiable information (PII) from all of these records. This personally identifiable information is composed of dates of birth, addresses, driver's license and social security numbers and private phone numbers of victims and witnesses. Release of this information would facilitate identity theft crimes. Additionally, victims and witnesses may be reluctant to report what they know to the police if they have to fear that this personal and sensitive information is subject to release upon a public records request. Thus, the release of this information would be contrary to the well-established public interests in crime prevention and reduction.

Various provisions of the Wisconsin Statutes compel the redaction of PII. Wis. Stats. §19.36(12) prohibits the release of PII of public contractor employees and Wis. Stats. 19.36(10) prohibits the release of public employees' PII. The public interests in protecting the PII of members of the general public is as strong or stronger than the public interests reflected in the statutes protecting public contractor employee's and public employee's PII. Therefore, where statutes protect public employee's and public contractor's PII from disclosure, it would be illogical to grant unfettered access to the PII of members of the general public.

Furthermore, Wis. Stats. §§ 15.04, 16.61, 19.65, 19.67, 19.68, 19.69, 19.77, 19.80, 45.81, 46.283, 46.284, 46.2895, 66.0903(10), 77.61, 85.61, 100.54, 103.49, 115.297, 118.125, 134.405, 196.23, 441.50, 450.145, 604.04(8), 610(6), 756.04, 949.04, and 949.36 each place explicit restrictions on the collection, archiving and sharing of PII. Collectively these statutes reflect the public policy that PII is extremely sensitive information. PII can be collected only when there is a bona fide business purpose for its collection; it must be securely archived and it shall be treated confidentially.

Records Protected By The Driver's Privacy Protection Act

I have redacted all information that was obtained through queries of the Wisconsin Department of Transportation driver's records database. I have made such redactions consistent with, and as mandated by, the federal Driver's Privacy Protection Act (DPPA), 18 USC §2721-2725. The DPPA defines the redacted information as "personal information" or "highly restricted personal information" which may only be released under enumerated conditions set forth under 18 USC §2721(b). None of those conditions are present with regards to these public records request. Therefore, it would be a violation of federal law to release such information.

Medical/Mental Health Information

I have also denied access to sensitive medical/mental health information contained in these records because of a recognized societal interest in protecting the confidentiality of such information. It is in the public's best interests that persons with medical, mental health and substance abuse issues seek appropriate treatment for those conditions. That interest would be undermined if such persons or their friends/family had to be concerned that seeking such treatment would make their information public knowledge. Indeed, sec. 146.50, Wis. Stats., provides that fire department records made by EMT's or first responders who administer emergency care or whom transport sick, disabled or injured persons constitute confidential patient health care records. Such records cannot be released without the informed consent of the patient or a person authorized by the patient. Although some of the redacted information did not come from confidential medical records, the disclosure of the redacted information would clearly disclose confidential and highly

personal medical information. Wisconsin Statutes and federal law contain numerous provisions that declare medical, mental health and substance abuse records to be confidential.

Investigative Techniques/Crime Fighting & Detection Strategies

The release and publication of some of the redacted material could disclose sensitive investigative techniques and strategies. Such disclosure and common knowledge of these techniques and strategies would undermine their effectiveness. Additionally, disclosing such information could impede the cooperativeness of witnesses who may be reluctant to speak with the police if they are aware of these sensitive techniques and strategies. The protection of such crime fighting techniques and strategies forms the foundation of the well-recognized exception to the Open Meetings Laws that permits public bodies to meet in closed sessions to discuss strategies for crime prevention and detection. Such sensitive crime fighting techniques and strategies must be kept confidential at this time in order to protect the public interests in conducting effective law enforcement investigations. It is counter to the public interests to compromise sensitive law enforcement techniques and strategies through public dissemination as doing so would impermissibly compromise the safety of law enforcement officers and the public should these tactics and strategies become public knowledge.

Police Officer Family Information

I have redacted the names, any phone numbers and employment information concerning the spouses/partners and family members of police officers. I have done so since §19.35(1)(am)2.a., Wisconsin Statutes, prohibits me from releasing any record that would endanger the life or safety of any person. Unfortunately, there have been persons who have acted out violently against the families of police officers simply because of their relationship to a police officer.

Redactions Respecting Victim's Rights

"The Wisconsin Constitution, art. I, § 9m, states that victims should be treated with "fairness, dignity, and respect for their privacy." Wisconsin Public Records Compliance Outline, Wisconsin Department of Justice (August 2008). The Wisconsin Statutes recognize that this constitutional right must be honored vigorously by law enforcement agencies. Victims include both persons against whom crimes have been committed and a deceased victim's family members. 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." *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ~ 26, 278 Wis. 2d 216, ~ 26, 692 N.W.2d 623, ~ 26.

Similarly, federal courts, including the United States Supreme Court, recognize that family members of a deceased person have personal rights of privacy-in addition to those of the deceased-under both traditional common law and federal statutory law. "Family 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 to accord to the deceased person who was once their own." *National Archives And Records Admin. V. Favish*, 541 U.S. 157, 168 (2004). I have been mindful of, and sensitive to, the interests of both the families of Tony T. Robinson and Ronald Brandon when reviewing and redacting these reports and have attempted to respectfully balance those interests against society's interest in overseeing the

conduct of its police officers. I respectfully ask that you, the reader of these records, share those same courtesies.

Conclusion

As previously noted, you will not be receiving any paper copies of these released records. Printed records will be available for viewing at the Madison Police Department website at www.cityofmadison.com/police/newsroom/reports.cfm. In addition, a copy of these records has been deposited with the Reference Librarian at the Central Branch of the Madison Public Library.

The Madison Police Department has expended substantial resources in collecting, reviewing and disseminating the enclosed records in a timely fashion. To that end, the Department streamlined the processing of these multiple requests and has hereby disclosed all of the records that have been requested and that can be disclosed by law.

In arriving at the above determinations, I have reviewed the requested information and have carefully balanced the public interests in nondisclosure of these records against the strong presumption that public records should be open to inspection. Access to these records has been denied only because it is clear that statutes command that I redact or withhold such records and/or public policies promoted by non-disclosure strongly outweigh the public's interests in full disclosure. In closing you are advised that, pursuant to Sec. 19.35 (4)(b) Wis. Stats., this determination not to disclose certain portions of these records is subject to review by Mandamus under Sec. 19.37 Wis. Stats., or upon application to the Wisconsin Attorney General or Dane County District Attorney. I have consulted with the City Attorney regarding these determinations in accordance with section 3.70(6) MGO.

Sincerely,



Anthony Bitterman, Lieutenant of Police
Cc Roger Allen, OCA