



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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November 28, 2022

Molly Zatman
134072-05628130@requests.muckrock.com

Dear Molly Zatman:

This is in response to your correspondence, dated September 20, 2022, in which you requested lists of the following:

- All certified officers
All law enforcement officers who are actively certified as of the date of this request (or when the request is processed). If your system maintains historical records of previously certified officers who are no longer active, please include them as far back as possible. If correctional officers are certified by your agency, please include them as well.
- Decertified officers
All law enforcement officers who have been decertified through revocations, voluntary surrenders, suspensions or any other actions going back as far as possible. Please include records for decertified correctional officers if available.

DOJ searched its files and identified data responsive to your request. As explained below, DOJ denies your request to the extent it seeks information on all officers in Wisconsin. DOJ is providing lists of the following:

- Law enforcement officers decertified by the Law Enforcement Standards Board (LESB).
- Currently certified law enforcement officers in Wisconsin who have been flagged in DOJ's law enforcement database as "terminated for cause," "resigned in lieu of termination," or "resigned prior to completion of internal investigation." Some of these officers may be employed currently.
- DOJ Division of Criminal Investigation (DCI) special agents.

DOJ is providing you with the above data with redactions as explained below.

Birthdates are being withheld to protect against identity theft or other unauthorized use following any subsequent disclosure. Pursuant to the Wis. Stat. § 19.35(1)(a) public

records balancing test, the public policy in favor of protecting the confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of this information.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ redacted the entries for certain individuals because disclosure of this information would reveal the names and other identifying information of individuals who work undercover or may work undercover, which would endanger the safety of the individuals. Additionally, providing this information would jeopardize the operations of undercover personnel who may be functioning in a role in which their true status as active law enforcement officers is unknown to subjects, targets, witnesses, and others who interact with the undercover officer. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. The public interest in revealing this information is outweighed by the public interests in effectively investigating and prosecuting criminal activity, protecting the safety of law enforcement personnel, and promoting effective law enforcement investigations. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30-32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811.

The DCI special agent list also included the names of two former DCI agents who are now federal law enforcement agents. These federal agencies have advised DOJ that, pursuant to express exemptions to disclosure set forth in the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(7), they protect and do not disclose the names of their agents. Because of the nature of those jobs, revealing these names could reasonably be expected to: disclose identities of confidential sources and undercover agents; reveal confidential law enforcement techniques; and endanger the life or physical safety of these individuals because their jobs entail a significant threat of retaliatory action against known agents. *See* 5 U.S.C. §§ 552(7)(D), (E), and (F). *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

For those reasons, these federal agencies have requested that DOJ redact this information from records in order to protect the safety and security of federal law enforcement personnel including undercover agents, and to preserve the integrity of federal investigations and other potentially related investigations. Under Wisconsin's public records law, DOJ may consider the policies reflected in exceptions to disclosure under FOIA when determining whether to provide access to records. *See Linzmeyer*, 254 Wis. 2d 306, ¶ 32; *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶¶ 13, 18, 372 Wis. 2d 460, 888 N.W.2d 584. The Wisconsin Supreme Court has cited the FOIA statutory exemptions in applying the balancing test analysis to Wisconsin law enforcement records. *Linzmeyer*, 254 Wis. 2d 306, ¶¶ 32-33; *Democratic Party of Wis.*, 372 Wis. 2d 460, ¶¶ 13, 18. Release of the redacted information would harm the public interest sought to be protected by these FOIA exemptions. That consideration, in turn, was a factor in the determination that such information could not be released under Wisconsin's public records law.

Therefore, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ finds that disclosure of this information could endanger the safety of law enforcement personnel; could subject federal law enforcement personnel to a significant threat of retaliatory action against known agents; could jeopardize the operations of undercover personnel who may be functioning in a role in which their true status as active law enforcement officers is unknown to subjects, targets, witnesses, and others who interact with those undercover officers; and could reveal confidential law enforcement techniques that would lose their effectiveness if

they became public knowledge. Accordingly, DOJ finds that the public interest in revealing this information is outweighed by the public interest in effectively investigating and prosecuting criminal activity, in protecting the safety of law enforcement personnel, and in promoting effective law enforcement investigations. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

Additionally, the ability of DOJ to work effectively with these federal law enforcement agencies on future law enforcement matters requires DOJ to respect the requested confidentiality regarding federal law enforcement personnel and information. In performing the balancing test pursuant to Wis. Stat. § 19.35(1)(a), DOJ determined there is a public interest in cooperating with these federal agencies so as to encourage the current and future joint law enforcement efforts of our agencies. To not honor these federal agencies' requests for confidentiality regarding reports and investigative information in this instance by disclosing the redacted information would preclude future record-sharing and significantly impair cooperative law enforcement efforts between DOJ and these federal agencies. Therefore, pursuant to the Wis. Stat. § 19.35(1) balancing test, DOJ finds that the underlying public interest in the safety and confidentiality of these federal agents and personnel, as well as the public interest in effective law enforcement, in effectively investigating and prosecuting criminal activity, in protecting the integrity of ongoing investigations, and in interagency cooperation, outweighs any public interest in disclosing this information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30, 32, 39.

Regarding the data DOJ is providing to you concerning flagged officers and DCI special agents, it should be noted that, prior to 2017, entries regarding "employment status" within that data were populated by choosing from among the following options: "Deceased," "Discharged," "Resigned," "Retired," or "Temporary Appointment Ended." (The LESB does not have more specific definitions for those options as they were used prior to 2017, but please note that usage of the "Discharged" option for entries prior to 2017 does not necessarily indicate that the listed employee was terminated from his or her position.) For anyone separated from employment on or after January 1, 2017, the LESB populates "employment status" fields by choosing from among the following options:

Separation Option	Definition
Deceased	Employee has passed away.
Resigned in Good Standing	Employee has resigned from the agency in good standing, as opposed to resignation in lieu of termination or resignation prior to completion of an internal investigation.
Resigned in Lieu of Termination	Employee has resigned, and had the employee not resigned, their employment would have been terminated by the employing agency (terminated for cause).
Resigned Prior to Completion of Internal Investigation	Employee resigned before the employing agency could complete an internal investigation based on allegations of misconduct or allegations of poor performance.
Retired	Employee has retired.
Separated Due to Agency Budget Cuts or Disbandment	Employment has ended because of agency budget cuts or because the agency disbanded.

Temporary Appointment Ended	Temporary appointment has ended.
Terminated for Cause	Employment terminated due to employee misconduct or poor performance.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, DOJ also redacted the entries for two other individuals. Both individuals called into question the inclusion of their respective names on the flagged list and have challenged their inclusion on the list, are involved in ongoing proceedings regarding their inclusion on the list, or are engaged in discussions with their former employers regarding their inclusion on the list. The release of the records with these two individuals' entries unredacted at this time would result in the release of potentially inaccurate records and adversely impact the individuals' challenges of their inclusion on the list, their efforts to address their inclusion on the list, and any related proceedings. There is a public interest in ensuring that an authority's records are accurate and free of errors and in allowing the individuals' challenges and any related proceedings to occur. In applying the balancing test, DOJ determined that the public interest in ensuring the accuracy of government records, preserving individuals' right to challenge a record's accuracy, and ensuring the integrity and fairness of related proceedings outweighs the public interest in disclosure of this information at this time. *See also* Wis. Stat. § 19.70.

Regarding the remainder of your request seeking information on all Wisconsin officers, DOJ denies this portion of your request pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In conducting the balancing test, DOJ begins with the statutory presumption that the public is entitled to the greatest possible information regarding the affairs of government and the official acts of the officers and employees who represent them. Wis. Stat. § 19.31. DOJ is also mindful that “[w]hen an individual becomes a law enforcement officer, that individual should expect that his or her conduct will be subject to greater scrutiny.” *Kroeplin v. DNR*, 2006 WI App 227, ¶ 44, 297 Wis. 2d 254, 725 N.W.2d 286. With these principles in mind, DOJ is required to determine “whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. *Id.* ¶ 13.

In applying the balancing test, DOJ balanced the public's right to information regarding the affairs of government with the public interests in maintaining confidentiality of the identities of persons serving as undercover officers; protecting the personal privacy of those officers who have been harmed or threatened in the line of duty; protecting the personal privacy of officers whose families and children have suffered harm or harassment due to the officer's status in law enforcement; maintaining confidentiality of officers who have received specialized tactical training; maintaining cooperative working relationships between local law enforcement agencies who provide information to DOJ; and in general, protecting officers and their families from being targeted for harm in what has become a very volatile environment in which officers must operate. There is a substantial public interest in Wisconsin law enforcement agencies' ability to recruit and retain qualified officers. Respecting the critical public safety role that law enforcement officers play in society, DOJ determined that public harm in disclosing data for all officers in Wisconsin outweighs the public interest in disclosure. A detailed explanation regarding DOJ's balancing test is provided below.

DOJ does not maintain up-to-date and complete records regarding officers' undercover status or other potential safety concerns. Providing information that would identify current undercover law enforcement officers, officers who might perform undercover work, or those with other specific safety concerns could endanger the safety of those officers who are working, or could work, undercover, or who have other specific safety concerns. Providing this information could also jeopardize the operations of undercover officers who may be functioning in a role in which their true status as an active law enforcement officer is unknown to subjects, targets, witnesses, and others who interact with that undercover officer. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. In applying the Wis. Stat. § 19.35(1)(a) balancing test, DOJ determined the public interest in revealing this information is outweighed by the public interest in protecting the safety of law enforcement officers and promoting effective law enforcement investigations. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41. In this instance, due to the relatively small size of the flagged officer list that DOJ is providing to you, DOJ was able to reach out to those local law enforcement agencies to inquire if they had concerns regarding the disclosure of the listed officers. Regarding the list of DCI special agents that DOJ is providing to you, because DCI is part of DOJ, DOJ was able to determine that certain special agents work undercover currently or may work undercover and redact their entries from the list.

Additionally, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test DOJ determined that the disclosure of the names of law enforcement officers would have an adverse effect on the safety and privacy interests of the officers and their families. Law enforcement agencies have been made aware that their personnel are at increased risk of being targeted by groups or individuals who use publicly available information for cyber attacks, doxxing, or swatting activities against officers and their families. Providing a list of names of officers could subject officers or their families to cyber, financial or personal attacks, including identity theft, stalking, harassment, and threats. Many of these consequences have already manifested. For example, investigations involving undercover officers have been compromised, the safety of plainclothes and undercover officers have been compromised, acts of fraud and identity theft against officers have occurred (which unjustifiably have undermined their credibility and the public trust they possess), and officers and their family and friends have suffered harassment, threats, and violence. Such ever-increasing hazards to officers could have a chilling effect on law enforcement agencies' abilities to recruit or retain qualified candidates for those positions. Applying the balancing test, these likely dangers also weigh in favor of not disclosing the data for all officers in Wisconsin.

There are some local law enforcement agencies that post information about their officers. However, there are other agencies that take steps to limit the amount of information about their officers that is available to the public. For example, some agencies no longer have officers wear nameplates on their uniforms and instead, require the public to identify them by badge number. There are approximately 571 law enforcement agencies and approximately 16,000 law enforcement officers in Wisconsin. Other than DCI special agents, DOJ does not have a list of which officers may be working undercover at any given time or which officers may be working in specialized units, such as those protecting dignitaries and those on federal task forces. DOJ does not maintain information related to which agencies post information publicly, and DOJ does not maintain a list of law enforcement agencies that do not publicly disclose officers' names on nameplates, or otherwise. In addition, DOJ does not know if any particular officers have specific safety concerns that a record custodian should consider prior

to release of records pertaining to that officer. *See, e.g., State ex rel. Ardell v. Milwaukee Bd. of Sch. Dir.*, 2014 WI App 66, ¶ 10, 354 Wis. 2d 471, 849 N.W.2d 894. Without knowing how each agency treats the release of information about its officers, it would be contrary to the public interest for DOJ to disclose information that could threaten current, non-DOJ law enforcement efforts or adversely affect the officers or agencies.

As such, DOJ determined that the public interest in disclosure of this information is outweighed by the public interest in effective investigation and prosecution of criminal activity and the protection of law enforcement officers and their families. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

Furthermore, your request is partially denied as insufficient pursuant to Wis. Stat. § 19.35(1)(h) because your request is not reasonably limited as to subject matter or length of time and, in turn, is excessively burdensome. The subject matter is not reasonably limited because, as mentioned, there are approximately 16,000 law enforcement officers in Wisconsin, and the information that would be potentially responsive to your request is voluminous. The necessary review of such records prior to release would require substantial DOJ resources and staff time. It would require DOJ to contact each of the approximately 571 law enforcement agencies in Wisconsin, request that those agencies review DOJ's data for their respective agencies, request that they conduct public records balancing test analyses in order to determine what information requires redaction, and then follow-up with those agencies that do not comply with DOJ's requests. The public records law does not impose such a burden on DOJ or the other authorities that did not receive your public records request, and does not require compliance by other such authorities, in any event. The public records law does not impose such heavy burdens on a record custodian that normal functioning of the office would be severely impaired and does not require expenditure of excessive amounts of time and resources to respond to a public records request. *Schopper v. Gehring*, 210 Wis. 2d 208, at 213, 565 N.W.2d 187 (Ct. App. 1997); *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17, 306 Wis. 2d 247, 742 N.W.2d 530.

Regarding the portions of your request seeking POST identification number, disciplinary actions, dates of disciplinary action, and officer's rank, DOJ has no records responsive to these portions of your request. The public records law "does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester." *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngarbe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). Furthermore, the public records law "does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format." Wis. Stat. § 19.35(1)(L); *see also George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992).

To the extent you seek the criminal history of any of the individuals on the lists, please be advised that DOJ's Crime Information Bureau (CIB) holds the central criminal fingerprint repository for Wisconsin. The computerized criminal history database contains detailed information of arrests, arrest charges, prosecution, court findings and sentences, and state correctional system admissions and releases. The database is an accumulation of information

submitted by Wisconsin law enforcement agencies, prosecutors, courts, and the Wisconsin Department of Corrections.

To the extent your request seeks such records contained within CIB files, there is a statutory provision that provides that such information is available upon payment of a fee. Specifically, Wisconsin Statute § 165.82 states, in part, “[n]otwithstanding s. 19.35(3), the department of justice shall impose the following fees, plus any surcharge required under sub. (1m), for criminal history searches for purposes unrelated to criminal justice or to s. 175.35, 175.49, or 175.60:

- (am) For each record check, except a fingerprint card record check, \$7;
- (ar) For each fingerprint card record check requested by a governmental agency or nonprofit organization, \$15;
- (1m) The department of justice shall impose a \$5 surcharge if a person requests a paper copy of the results of a criminal history search requested under sub. (1).”

The form necessary to submit such a request may be found at www.doj.state.wi.us under the tab, “Background Check and Criminal History.” Instructions for completing and submitting the form and payment are included on the website.

The law permits DOJ 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), DOJ 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, DOJ is waiving its fees associated with responding to your request. Enclosed, please find the data responsive to your request.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:amh

Enclosure