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November 13, 2007

Mr. Dean J. Collins
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Dear Assistant Chief Collins:

I am writing in response to your letter dated October 15, 2007. In that letter, you refer to a September 18, 2007, outline I prepared entitled "The Wisconsin Public Records Law and the Federal Driver Privacy Protection Act" ("September Outline"). You direct my attention to Page 3 of that outline, on which appears a statement about inapplicability of the "*Foust* exception" to records held by law enforcement agencies. That statement, quoted in context, is as follows:

> A. No absolute or "blanket" rule against disclosure of law enforcement records (2007 Outline, at 28-29).
>
> 1. Note: A frequent source of confusion is the blanket rule allowing non-disclosure of district attorney prosecution files. *See State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 436, 477 N.W.2d 608 (1991).
>
> 2. The *Foust* exception does not authorize the same blanket non-disclosure of records held by law enforcement agencies, even if the prosecutor has copies of the same records in his or her files.

September Outline, at 2-3.

The "2007 Outline" referred to in the above excerpt is the Wisconsin Public Record Law Compliance Outline issued by the Department of Justice in August 2007. As the above excerpt indicates, Pages 28-29 of the 2007 Outline discuss law enforcement records. Pages 3-5 of the September Outline also discuss case law interpreting and applying the public records balancing test to law enforcement records, including the general deference accorded to the interests of public safety and effective law enforcement.

Foust authorizes a prosecutor to assert a common law privilege against disclosure of records in his or her case files. *Foust*, 165 Wis. 2d at 436. In previous correspondence, our office explained to you and your city attorney why the *Foust* rule does not apply to records in the possession of a police department even though copies of the same records may be in a prosecutor's case file. Letter from Peggy A. Lautenschlager, Attorney General, State of Wisconsin, to Vincent D. Moschella, City Attorney, City of Brookfield, and Dean J. Collins, Assistant Police Chief, City of Brookfield (April 15, 2005) ("2005 Letter"). I will not repeat that analysis, in which I concur, but enclose a copy of the 2005 Letter for your reference.

In your October 15 letter, at Page 1, you question "how a police agency can allow an end run around the common law exception for prosecutor's case files enunciated in *Foust* by releasing its reports (already in the prosecutor's files) without reducing that exception to a nullity." You also reason that "[s]uch a practice makes a sham of the statutes on pre-trial discovery and thus also perhaps grants the defense a tactical advantage over a prosecutor who has not yet examined the police reports." *Id.*

The prosecutor's office and the police department are separate authorities for purposes of the public records law, *see* Wis. Stat. § 19.32(1), but there is no prohibition against police department consultation with the prosecutor's office when preparing a response to a public records request for police records, copies of which also are held by the prosecutor. In fact, for reasons including those you identify, our office strongly encourages such consultation. *See, e.g.,* 2005 Letter at 6 ("[T]his office strongly recommends that police record custodians consult with the prosecutor when responding to requests for police reports in cases under active investigation or prosecution. Even when a case has been closed, following a final adjudication, we recommend such consultation and cooperation."). Although the public records law and criminal discovery statutes provide separate mechanisms to obtain potentially the same records, consultation with the prosecutor can help identify public records disclosures that, if made by the police department, would impede or undermine a related criminal prosecution. *See Seifert v. School Dist. of Sheboygan Falls*, 2007 WI App 207, ¶ 28, ___ Wis. 2d ___, ___ N.W.2d ___ (recognizing public records law and criminal discovery as separate mechanisms to seek records). Not undermining a criminal prosecution is a public interest that can weigh against release of police records in the public records balancing test. *Linzmeyer v. Forcey*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306, 646 N.W.2d 811 ("First and foremost, there is a strong public interest in investigating and prosecuting criminal activity, and when the release of a police record would interfere with an on-going prosecution or investigation, the general presumption of openness will likely be overcome.")

In your October 15 letter, at Page 2, you further "submit that the *Foust* decision does apply to record requests made for police reports contained in a prosecutor's case file and that if the balancing test is required, the public policy rationales enunciated by the Wisconsin Court of

Appeals in its *Middleton* decision amply justify nondisclosure by the police." To be clear, if a public records request is submitted to the prosecutor's office, then the prosecutor must determine whether or not the prosecutor's office will release any or all of the records—including police reports—contained in the prosecutor's case file. If the public records request is submitted to the police department, however, then the police department must determine—perhaps informed by consultation with the prosecutor—whether or not to release any or all of the records contained in the police department's case file. As explained above and in our 2005 Letter, *Foust* only applies to public records requests for the prosecutor's case file—not the police department's case file.

The *Middleton* decision to which you refer is an unpublished decision issued by a one-judge panel of the Wisconsin Court of Appeals. *State ex rel. Downing v. Middleton Police Department*, No. 93-2837 (Wis. Ct. App. Nov. 3, 1994). One-judge Court of Appeals decisions are not published. *See* Wis. Stat. § 809.23(1)(b)4. Unpublished Court of Appeals decisions have no precedential value and can be cited only for limited procedural reasons. Wis. Stat. § 809.23(3). Similarly, it is possible only to speculate about why the Wisconsin Supreme Court would grant or deny any petition for review of a particular Court of Appeals decision. *Cf.* October 15, 2007, letter at 2. The Supreme Court's denial of a petition for review does not imply approval of or agreement with the Court of Appeals decision that is the subject of the petition. *W.W.W. v. M.C.S.*, 156 Wis. 2d 446, 458, 456 N.W.2d 899 (Ct. App. 1990), *aff'd*, 161 Wis. 2d 1015, 468 N.W.2d 719 (1991).

The Legislature did expressly declare in the public records law that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Wis. Stat. § 19.31. The Legislature further instructed that the public records law is to "be construed in every instance with a presumption of complete public access" and that "only in an exceptional case may access be denied." *Id.* Exceptions to the presumption of disclosure must be narrowly construed, and will not be recognized by the courts unless explicit and unequivocal. *Kroeplin v. Wisconsin Dep't of Natural Res.*, 2006 WI App 227, ¶ 13, 297 Wis. 2d 254, 725 N.W.2d 286. *Foust* therefore recognizes an explicit prosecutor file exception in derogation of the general public records rule of complete public access, but cannot be read broadly to also imply that the same exception applies to police records in the hands of police departments.

Although our courts have not recognized the same blanket exception for police departments as *Foust* recognizes for prosecutors, the courts have identified numerous law enforcement, prosecution, and public safety considerations that can be considered when applying the public records balancing test to police records. *E.g.*, *Linzmeyer*, 254 Wis. 2d 306. As noted above, our office encourages police department consultation with the prosecutor's office to ensure that relevant law enforcement, prosecution, and public safety concerns are considered when the police department is processing a public records request for police records of which the

prosecutor's office may possess copies or regarding which the prosecutor's office may have other interests or concerns.

Thank you for taking the time to write me about *Middleton* and public records requests to police departments. Although I do not share your view that *Middleton* and *Foust* should be read to create a blanket exception for police departments in responding to public records requests for police records of which copies have been forwarded to a prosecutor, I hope that this letter, our 2005 Letter, and our various outlines and training materials are helpful in understanding how the balancing test appropriately protects criminal investigation, prosecution, and public safety in specific circumstances where those interests outweigh the usual public records presumption of disclosure.

Sincerely,

Mary E. Burke
Assistant Attorney General

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April 15, 2005

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Dear Mr. Moschella and Mr. Collins:

You have asked a series of questions concerning whether certain police records relating to juveniles, to adult sexual assault victims and to cases referred for prosecution may or must be withheld under the Wisconsin public records law, Wis. Stat. §§ 19.31-19.39, or other relevant statutes, particularly Wis. Stat. §§ 48.396 and 938.396 relating to "Records" under the Children's Code (Wis. Stat. ch. 48) and the Juvenile Justice Code (Wis. Stat. ch. 938), respectively.

Since the initial inquiry was received, City Attorney Moschella has prepared provisional answers to those questions and has solicited further comments. I appreciate the careful attention Mr. Moschella gave to this matter and recommend that the police department continue to work closely with the city attorney on the kinds of day to day questions that inevitably arise concerning access to police records. This discussion will focus primarily on those points where our analysis diverges. I have tried to make my responses succinct, yet as general as possible. Your questions and my responses are as follows:

> **Question # 1.** Exactly what constitutes a "juvenile record" for public records purposes? Is it any record which mentions a juvenile including juvenile victims or witnesses, or must the juvenile be the focus of the record, e.g., a juvenile suspect?

Response: The term "juvenile record" is not a statutory term and, as a result, confuses rather than assists the analysis. As I suggested above, both the Children's Code, Wis. Stat. ch. 48, and the Juvenile Justice Code, Wis. Stat. ch. 938, contain specific provisions governing access to records covered by those statutes. Therefore, one must examine the language of

Wis. Stat. §§ 48.396 and 938.396 to determine what records they cover, rather than working backwards from the generic term "juvenile record."

Wisconsin Stat. § 48.396(1) refers generally to "[l]aw enforcement officers' records of children" and "[l]aw enforcement officers' records of the adult expectant mothers of unborn children . . . ." However, Wis. Stat. ch. 48 itself, while broad, is limited to the subjects covered by Wis. Stat. ch. 48, including children in need of protection and services, foster care, child welfare services and other matters within the jurisdiction of the courts pursuant to Wis. Stat. ch. 48. Wisconsin Stat. ch. 938, the Juvenile Justice Code, while also broad, is limited generally to the matters within the jurisdiction of the courts pursuant to Wis. Stat. ch. 938, including matters which would be prosecuted as crimes if committed by an adult. Within the context of—and limited to—Wis. Stat. chs. 48 and 938, this office has previously opined that the language of Wis. Stat. §§ 48.396(1) and 938.396(1) is broad enough to cover not only records relating to juvenile suspects, but children or juveniles "who are witnesses or who otherwise become involved in a police investigation" as well. *See* 77 Op. Att'y Gen. 42, 47-48 (1988); *see also*, correspondence dated December 3, 2003, from Attorney General Peggy A. Lautenschlager to Andy Nelesen, Green Bay Press-Gazette. To the extent that either the 1988 opinion or the 2003 correspondence was not expressly limited to records created or maintained pursuant to Wis. Stat. chs. 48 and 938, I wish to clarify those statements accordingly.

While Wis. Stat. §§ 48.396(1) and 938.396(1) both refer broadly to "[l]aw enforcement officers' records" of "children" and "juveniles," respectively, the prohibitions on access to records relating to children or juveniles contained in those provisions must necessarily, therefore, be limited to records of the kind created and maintained pursuant to Wis. Stat. chs. 48 or 938. Consequently, the mere fact that a document in the hands of a law enforcement officer happens to identify an individual who, by age, is either a "child" or a "juvenile,"[1] does *not* render that document a "record" within the coverage of either or both Wis. Stat. §§ 48.396(1) and 938.396(1).

One common example of a record identifying a juvenile that would not necessarily be within the coverage of either statute is a police report recounting the statement of an adult suspect who confesses to a crime against a particular child, identified by name and age. Access to such records is not necessarily limited by either Wis. Stat. § 48.396(1) or 938.396(1). Rather, access to law enforcement records relating to adult suspects is generally governed by the provisions of the public records statute. *See generally, Linzmeyer v. Forcey*, 2002 WI 84,

[1]"Child" is defined in Wis. Stat. § 48.02(2) and "juvenile" in Wis. Stat. § 938.02(10m). Both terms refer to "a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance" neither "child" nor "juvenile" includes "a person who has attained 17 years of age." *See id.*

254 Wis. 2d 306, 646 N.W.2d 811. In answer to your specific question, therefore, the fact that a law enforcement record happens to identify or relate to a "child" or "juvenile" does not subject the record to the limitations of Wis. Stat. § 48.396(1) or 938.396(1) *unless* the underlying action, investigation or proceeding is one arising under either Wis. Stat. ch. 48 or 938, respectively.

Question # 2: Is a police incident report with an adult suspect and a juvenile victim a "juvenile record?"

Response: As discussed above, regardless of whether such a report might be labeled a "juvenile record," the report would not necessarily be a document within the coverage of either Wis. Stat. § 48.396(1) or 938.396(1) and if not, its release to the public would not be limited by either statute. In the event such an incident report is kept or maintained solely in connection with a matter or proceeding under either Wis. Stat. ch. 48 or 938, however, its storage and release are subject to Wis. Stat. § 48.396(1) or 938.396(1), respectively.

In some situations, however, there is a very real possibility of simultaneous proceedings under Wis. Stat. ch. 48 or 938 and the adult criminal code. For example, the investigation of a Wis. Stat. ch. 48, "Child in Need of Protection and Services" ("CHIPS") matter, *see* Wis. Stat. § 48.13, *et. seq.*, may also lead to adult criminal charges against one or more adults implicated in the investigation. Alternatively, both a juvenile and an adult may be implicated in actions that would be charged separately as an ordinary criminal matter if the adult is charged and a Wis. Stat. ch. 938 proceeding where the juvenile is charged.

To the extent the same records are maintained in connection with such simultaneous proceedings, questions of access to records controlled by either Wis. Stat. § 48.396(1) or 938.396(1) and the public records statute present special difficulties for the custodian for which there may often be no simple or clear answer. In cases like these, I strongly advise the custodian to work closely with legal counsel to identify the best solution for the particular case.

Some requests for records of this kind can be disposed of on the basis of an active investigation or ongoing judicial proceeding as discussed below. Others can be resolved based on the various statutory exceptions allowing access under Wis. Stat. §§ 48.396, 48.293, 938.396 or 938.293, or the ability to seek a court order allowing access pursuant to Wis. Stat. §§ 48.396(1) and 938.396(1) themselves. In general, when two statutes relate to the same subject matter, the more specific record access statute controls, rather than the general public records statute. *Cf. State v. Larson*, 2003 WI App 235, ¶ 6, 268 Wis. 2d 162, 672 N.W.2d 322. Again, I urge the custodian faced with such difficult record access questions to work closely with legal counsel to develop the most reasonable response based on the circumstances of the particular case.

Question # 3: If the answer to question two is affirmative, may the release of the report be denied *in toto*?

Response: If the report is kept or maintained solely in connection with either a Wis. Stat. ch. 48 or 938 proceeding, the report is not subject to release under the public records statute. Instead, the document may only be released or shared with others pursuant to specific statutory exceptions including those set forth in Wis. Stat. §§ 48.396 and 938.396, or by order of the court under Wis. Stat. §§ 48.396(1) and 938.396(1).

If a police incident report concerning an adult suspect and a juvenile victim is not maintained in connection with a Wis. Stat. ch. 48 or 938 proceeding, however, release of the report would ordinarily be governed by the public records statute, particularly Wis. Stat. § 19.35(1)(a) and (am). Under the public records statute, absent a statutory or common law exception, release of the report is controlled by application of the common law balancing test, *i.e.*, the custodian's determination whether public policies favoring nondisclosure have overcome the ordinary presumption that the record should be open to the public. *See Linzmeyer*, 254 Wis. 2d 306, ¶¶ 10-12. Furthermore, even if parts of a record may properly be withheld, the custodian must separate those parts that remain confidential from those that can be released. *See* Wis. Stat. § 19.36(6). In *Linzmeyer*, a case involving law enforcement investigative records, the court, in fact, took the opportunity to provide general guidance on the application of the public records statute to police records, identifying some of the factors "that should be taken into consideration by records custodians before law enforcement records are publicly released." *Id.*, 254 Wis. 2d 306, ¶ 12.

Question # 4: If the answer to question 2 [referring to a police incident report involving an adult suspect and a juvenile victim] is negative, does the juvenile's identity and relationship to the suspect need to be redacted? If so, what is the authority for redaction?

Response: In my view, the strong public policy expressed in both Wis. Stat. §§ 48.396(1) and 938.396(1) for protecting the identities of children and juveniles, regardless of whether the individual is a suspect, an accused or a victim, would justify redaction of names and other identifiers of juveniles in records not directly governed by either statute. While the cases recognize that the balancing test must be done on a case by case basis, I am aware that record custodians commonly redact identifying information relating to children or juveniles when releasing records under the public records statute for this very reason.

Question # 5: Is there any legal authority to redact the name of a sexual assault victim from a police report?

Response: If the victim is a juvenile, the response to question no. 4 above applies. Even if the victim is an adult, however, there are a variety of public policies that may favor protecting the identity of a sexual assault victim in many cases. While the balancing test must be applied on a case by case basis, I agree generally with City Attorney Moschella's analysis on this point:

> There is no blanket statutory or case law prohibition against such release. Therefore, the balancing test must be applied to each request. The usual factors would apply, including, most importantly, a release which would endanger the victim, as found in Sec. 19.35(1)(am)2.a. . . . [A]s a practical matter, in most instances, respect for the victim's privacy will outweigh any public concerns in the application of the balancing test. Disclosure may . . . re-victimize the victim by . . . reopen[ing] emotional wounds caused by the assault, discourage victims' recourse to the judicial system . . . and subject victims to intimidation by family or friends of the suspect to dissuade the victim from testifying. Furthermore . . . the protection of the identities of sexual assault victims will encourage the reporting of such traumatic crimes[.]

Interim Opinion of City Attorney Moschella (October 8, 2004) at 2. *See also* Wis. Const. art. I, § 9m (statement of public policy favoring respect for crime victims' privacy); Wis. Stat. § 895.50 (statutory right of privacy).

Question # 6: May requests for police reports of emergency detentions under Sec. 51.15 be denied *in toto* pursuant to laws governing the confidentiality of medical records or any other legal authority?

A full answer to this question is beyond the scope of this response. As City Attorney Moschella advises, however, information contained in a police report is not the equivalent of a court or treatment record that is directly subject to the confidentiality provisions of Wis. Stat. § 51.30(3)(a) and (4)(a). *See Daniel A. v. Walter H.*, 195 Wis. 2d 971, 537 N.W.2d 103 (Ct. App. 1995) (*review denied*) (*information* in a treatment record is not necessarily taboo; if the information is obtained from a source other than a treatment record, it is not subject to the privilege covering treatment records). *Cf.* Wis. Stat. § 146.50(12) (governing release of records of ambulance services, emergency medical technicians and first responders; identifying particular information an authority "may make available" to the public); 78 Op. Att'y Gen. 71 (1989) (interpreting Wis. Stat. § 146.50(12)).

Therefore, the balancing test must be applied when responding to requests for police reports concerning emergency detentions under Wis. Stat. § 51.15. In that regard, public policies

favoring patient confidentiality, including those expressed in Wis. Stat. ch. 51 and §§ 146.82 and 153.50, in the physician-patient and related privileges protected by Wis. Stat. § 905.04, as well as the statutory right of privacy, Wis. Stat. § 895.50, weigh against disclosure. On the other hand, public policies favoring oversight and scrutiny of police actions tend to favor disclosure of at least some of the information one might expect to be contained in a police report concerning the response to a call for emergency detention. *Cf. Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 436-37, 279 N.W.2d 179 (1979); *see also*, Wis. Stat. § 146.50(12)(b).

> **Question #7:** May law enforcement agencies release the police reports already contained in the prosecutor's case file even if the case has been closed or finally adjudicated? (It is assumed that [the] better practice would be to refer such requests to the prosecutor.)

Response: I understand the question to relate to police reports concerning adults charged with crimes when copies of these reports are contained both in the prosecutor's file and in the police department's file. As the parenthetical comment suggests, this office strongly recommends that police record custodians consult with the prosecutor when responding to requests for police reports in cases under active investigation or prosecution. Even when a case has been closed following a final adjudication, we recommend such consultation and cooperation.

Nonetheless, it is critical to recognize that, although the prosecutor's file may contain many of the same documents that are contained in the police file, the custodians of these respective records are different and the release of records contained in the respective files stands on different footing. As *Linzmeyer* recognizes, both expressly and implicitly, access to records within the custody of a law enforcement agency, unless subject to a statutory or common law exception, is generally governed by application of the common law balancing test. *See id.*, 254 Wis. 2d 306, ¶¶ 23-25, 42.

In contrast, the Wisconsin Supreme Court has recognized that records contained in a prosecutor's files are protected by a common law privilege against disclosure, *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 434-35, 437, 477 N.W.2d 608 (1991), unless a particular record contained therein is independently subject to disclosure despite the fact that it is stored in a prosecutor's file. *See Nichols v. Bennett*, 190 Wis. 2d 360, 364-65, 526 N.W.2d 831 (Ct. App. 1994). *Linzmeyer* does recognize that when an investigation is open or ongoing, as in the case of an active investigation or an ongoing criminal prosecution, the common law presumption of openness of investigative records is effectively reversed. *Linzmeyer*, 254 Wis. 2d 306, ¶ 30 (observing that "when the release of a police record would interfere with an on-going prosecution or investigation, the general presumption of openness will likely be overcome"). That is, while such records remain subject to the balancing test, *Linzmeyer*, in effect, recognizes a presumption against their release when they relate to an active investigation,

including an ongoing prosecution. *Id.* Furthermore, particularly while a case is active or ongoing, the common law privilege protecting against disclosure of the prosecutor's file recognized in *Foust* further supports the conclusion that police records that have been shared with the prosecutor may ordinarily be withheld from disclosure.

Once a prosecution is concluded, however, the ordinary balancing test governing access to police records applies with full force. *See Linzmeyer*, 254 Wis. 2d 306, ¶¶ 26, 42. That is, they are presumptively accessible to the public but may be withheld from disclosure on a case by case basis when the presumption of openness in law enforcement records is overcome by other, competing public policies. *Id.* Accordingly, I disagree with any suggestion that *Foust* directly controls access to police records in police custody, regardless of whether a case is active and ongoing, or is inactive or closed. Nonetheless, given the strong public interest favoring cooperation between law enforcement agencies, I urge police agencies to coordinate with the prosecutor's office in the handling of law enforcement records that are shared between them.

One final point must be addressed in view of the suggestion that Wis. Stat. § 19.35(1)(am)1.,[2] is a "specific statutory prohibition against disclosure" that forbids disclosure of records "collected or maintained in connection with" a criminal prosecution. *See id.*, discussed in Interim Opinion at 3. By its terms, Wis. Stat. § 19.35(1)(am) creates an individual right to obtain access to certain records, over and above that of the general public recognized in Wis. Stat. § 19.35(1)(a). Under Wis. Stat. § 19.35(1)(am)1., this enhanced individual right of access relates to "[a]ny record containing personally identifiable information that is collected or maintained . . ." in connection with various actions or proceedings. This enhanced *individual* right of access is expressly limited by the exceptions set forth in Wis. Stat. § 19.35(1)(am)2.a.-d.

As the court recognized in *Linzmeyer*, Wis. Stat. § 19.35(1)(am) and the exceptions thereto do not apply to requests for public records covered by Wis. Stat. § 19.35(1)(a), the general access to records statute. *See Linzmeyer*, 254 Wis. 2d 306, ¶¶ 17-18 and n.4. Nevertheless, the court further observed that the exception to the enhanced right of individual

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[2]Wisconsin Stat. § 19.35(1)(am) provides in relevant part:

> In addition to any right under par. [19.35(1)](a), any requester who is an individual . . . has a right to inspect any record containing personally identifiable information pertaining to the individual that is maintained by an authority and to make or receive a copy . . . . The right to inspect or copy a record under this paragraph does not apply to any of the following:
>
> 1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action . . . or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

access set forth in Wis. Stat. § 19.35(1)(am)1., "would most likely apply to a police investigation that was still on-going, an investigation where the government was still contemplating prosecution, or an investigation that overlapped with other on-going cases." *Linzmeyer*, 254 Wis. 2d 306, ¶ 18.

I agree that Wis. Stat. § 19.35(1)(am)1., expresses a public policy protecting against access by individuals—and the public generally—to investigative materials compiled in connection with an ongoing investigation. However, I strongly disagree with the suggestion that this exception to the individual right of access to personally identifiable information created by Wis. Stat. § 19.35(1)(am) is, by its terms, a "statutory *prohibition* against disclosure" that forbids disclosure of records "collected or maintained in connection with" a criminal prosecution. *See* Interim Opinion at 3. Rather, this provision is, by its terms, simply an exception to the enhanced individual right of access created by Wis. Stat. § 19.35(1)(am).

If, as a result of the exception, the enhanced individual right of access by virtue of Wis. Stat. § 19.35(1)(am) does not apply, the requester's right of access remains governed by the ordinary public access provisions of Wis. Stat. § 19.35(1)(a). As discussed above, absent a statutory or common law exception, access to police records under the public records statute, Wis. Stat. § 19.35(1)(a), is governed by application of the common law balancing test. Therefore, while the exception to disclosure of personally identifiable information set forth in Wis. Stat. § 19.35(1)(am)1. contains a useful statement of public policy against disclosure of information collected in the course of an active or ongoing law enforcement investigation, this subsection is simply not a statutory *prohibition* against disclosure. In effect, Wis. Stat. § 19.35(1)(am)1. simply reinforces the custodian's ordinary discretion, under the balancing test, to determine whether or not a particular investigative record should be released and lends support to a decision against disclosure in circumstances described therein.

I hope this information assists you in your efforts to comply with the provisions of the public records statutes as well as the limitations on access contained in the Children's Code and the Juvenile Justice Code, Wis. Stat. §§ 48.396(1) and 938.306(1).

Very truly yours,

Peggy A. Lautenschlager
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