CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: August 15, 2026

FORMAL OPINION NO. 2026-001

TO: Aeiramique Glass, Interim Independent Police Monitor
John Patterson, Chief of Police

FROM: City Attorney Michael Haas

RE: Law Governing Release of Records Related to Officer-Involved Death Investigations

I. INTRODUCTION AND BACKGROUND

On July 27, 2026, the Office of Independent Monitor ("OIM") issued a "Subpoena Duces Tecum" requesting records from the Chief of Police and the Custodian of Records of the Madison Police Department ("MPD") and including a response deadline of July 31, 2026. This subpoena was drafted in response to the officer-involved death of Corey Ruiz on July 22, 2026. This memorandum outlines the analysis of the Office of City Attorney and our conclusions regarding the applicability of Wisconsin law to the OIM's authority to obtain access to records and evidence related to the ongoing outside investigation.

This analysis involves several Wisconsin Statutes, Madison General Ordinances and basic principles involving records of open and active criminal investigations. Despite our best effort as attorneys, the legal analysis can seem technical and dense, although in this case the basic ideas and logic are fairly straightforward. Due to the significance of the issues involved and the public interest in both the facts of this matter and legal issues involved, and because this memo addresses some side issues along the way, I would like to clearly state our main conclusions first and then provide our more detailed analysis and reasoning:

1. Wisconsin Statutes give priority to the outside investigation into the officer-involved death being conducted by the Department of Justice's Division of Criminal Investigations (DCI). In this case MPD cannot share its records or evidence without approval of DCI and the Dane County District Attorney.

2. Wisconsin Statutes § 175.47 prohibits the sharing of MPD records for the purpose of any City investigation when such investigation could interfere with

the DCI investigation. Madison ordinances related to the OIM cannot supersede Wisconsin law and are subject to it.

3. With the possible exception of personnel and training records of involved officers, none of the records sought in the subpoena can be released to the OIM at this time but may be released at the conclusion of DCI's investigation and the District Attorney's review of the file or if DCI determines specific records can be released sooner because such release will not interfere with its investigation.

At the outset I would note the uniqueness of the questions we are asked to address. No other Wisconsin municipality has enacted ordinances establishing an agency or body charged with civilian oversight of its police department. Wisconsin Statutes do not contemplate the existence of such entities or their authority to issue subpoenas, and they do not provide any specific guidance regarding their interactions with law enforcement or investigative agencies.

This also means there are no court decisions to provide the City with specific direction on the relationship between the relevant state laws and Madison's ordinances. Still, while there is no Wisconsin court decision addressing the authority of a law enforcement oversight agency (other than a police and fire commission) or the issuance of a subpoena under these circumstances, our office is confident that the relevant statutes cited below require the conclusions stated in this memo because they involve basic principles regarding the conduct of criminal investigations and access to public records.

II. THE ROLE OF THE CITY ATTORNEY'S OFFICE

Before outlining the laws governing release of law enforcement records, I would like to address questions that have been raised regarding the role of the Office of City Attorney (OCA) in providing guidance to City agencies and specifically to the Office of the Independent Monitor which has repeatedly argued that the City Attorney's Office has an inherent conflict of interest in representing both MPD and the OIM. This argument fails to distinguish between attorneys who represent a singular client and those who, like the City Attorney's Office, represent an entire organization. In short, the OCA is charged with representing the legal interests of the City of Madison as an organization.

This responsibility is established in both Wisconsin law and City ordinances. Wis. Stat. § 62.09(12)(a) states that the city attorney "shall conduct all the law business in which the city is interested." Wis. Stat. § 62.09(12)(g) also states that the Common Council "may employ and compensate special counsel to assist in or take charge of any matter in which the city is interested." And Madison General Ordinance § 3.07(1) directs that the OCA "shall be responsible . . . for the conduct of all legal services of the City and shall serve as legal advisor to the Council, the Mayor and all departments and offices of the City."

It is true that the Common Council has authorized the OIM to retain outside legal counsel if necessary to fulfill the duties of the OIM pursuant to MGO 5.19(7)(l). This authorization does not affect the responsibility of the OCA to represent the City as an organization or its ability to issue an opinion regarding activities of the OIM or interactions of other agencies with the OIM. In addition, while the OIM has the ability to retain outside counsel who may review this analysis and offer their own opinion, as of the time of drafting this memo, the OIM has not executed a valid contract with outside counsel and therefore no separate attorney has been retained to assist the OIM in fulfilling its duties. When and if one is retained, its charge will be limited to assisting the OIM in fulfilling the duties of that office, and the OCA will continue to represent the City as a whole under the authority cited above.

Serving as an organizational attorney can mean many things in practice. For purposes of this analysis, the significant point is that the City Attorney's Office remains subject to the Wisconsin Supreme Court's Rules of Professional Conduct and each attorney in our office must comply with those rules or risk disciplinary action that may affect their law license and ability to practice law in Wisconsin. In particular, Supreme Court Rule 20:1.13 is titled "Organization as client" and states that a lawyer retained by an organization represents the organization acting through its duly authorized constituents. In other words, the OCA works with all City officials, agencies and boards but the client is the City as an organization, not any specific City official, agency or board.

In this role, it is not unusual for the OCA to work with and provide advice to multiple City agencies involved in specific matters. Sometimes different components of an organization consisting of approximately 30 agencies and over 3,000 employees have different perspectives, missions and goals. The responsibility of the City Attorney's Office is to provide our best judgment about what Wisconsin law requires, allows and prohibits. In most cases this work does not involve representing one agency versus another agency; it is simply analyzing and interpreting state or federal law for the City as a whole. To the extent that an agency does not agree with the guidance that the OCA provides, it is typically the federal or state law, not the City Attorney's Office, that may create a challenge or obstacle.

When there is an actual conflict of interest, the OCA also has a responsibility to disclose that to its client and to take steps to remedy the situation. This may involve, for example, assigning one attorney to prosecute cases before a City body and another to advise the body during its deliberations, and to ensure that the two attorneys do not discuss the matter outside of the hearing process. Or it may require that the OCA recuse itself from some matter and recommend that the City retain outside counsel.

After careful consideration, it is my conclusion that the OCA is not precluded from providing this guidance to both MPD and the OIM. First, in this matter, it is not even clear that MPD and the OIM have differing goals, given that both the Police Chief and the Independent Monitor have expressed a desire for the Division of Criminal Investigations to release as much information as possible regarding this matter as soon as possible. This opinion is about interpreting the law, not advocating for the position of either agency.

Second, to the extent that either agency believes that its interests are adverse to the City's interests, I am required, under Supreme Court Rule 20:1.13, to remind each that our client is the City as a whole and the issue at hand is how the City must comply with state laws. This memo will guide the actions of both the OIM and MPD.

Finally regarding the role of our office in relation to the OIM, it is also important to note that the OCA has no involvement in the OIM's investigation of police officer conduct or the processing of complaints. The OIM does not consult with our office or share information regarding pending investigations and we make no recommendations regarding the OIM's analysis, findings or recommendations.

III. MGO 5.19 and 5.20 and the MOU

With that extended background, this memo now addresses the legal issues posed by the subpoena issued by the OIM to MPD. Any analysis of the applicability of Wisconsin law to the OIM's authority must start with the creation of the ordinances establishing the OIM, which is MGO 5.19, and the Police Civilian Oversight Board (PCOB), which is MGO 5.20.

When these ordinances were being developed and considered in 2020, the OCA was extensively involved in the proceedings. Three OCA attorneys attended and participated in many hours of meetings of both the Common Council and the Alder Workgroup to Develop Logistics & Operational Details for Madison Police Department Independent Civilian Oversight. We assisted in reviewing ordinances of other municipalities, conducted legal research and provided legal insight, and drafted the proposed ordinances.

During the Alder Workgroup's consideration, and prior to the Common Council's deliberations regarding the proposed ordinances, our office raised several issues that were not addressed in Wisconsin Statutes or the proposed ordinances. We also raised issues that represented departures from standard City procedures, or that created gray areas in the implementation of oversight activities. Some of those issues are outlined in two memos the OCA issued at the time, one of which is included in Legistar here, and which is also attached. As I wrote at the outset of that memo:

> The draft ordinances are significant in their scope and, in some instances, in their departure from current City practices and

> procedures. I hope that this memorandum will assist policymakers and the public in understanding the intent of the ordinances and the policy choices presented by them, including specifically the policy choices presented by provisions that may differ from traditional City practices and procedures. It is important that the Council and community have a shared set of expectations regarding the role, authority and operations of the Independent Monitor and Civilian Oversight Board as well as the possible limitations on that authority under applicable laws.

As outlined below, the Common Council chose to not completely resolve some key outstanding issues and to wait to see how oversight authority worked in practice before determining whether any changes or clarifications to the ordinances were required. It is not entirely surprising, therefore, that the City is now returning to some of those unresolved issues in the midst of a significant incident that the OIM wishes to investigate.

For example, much attention has been focused on the ordinance language requiring that the OIM have both "unfettered access" to MPD records and the authority to issue subpoenas. In many cases where these provisions are discussed publicly, the conversation omits the phrase "to the extent permitted by law" which is a key modifying term in MGO 5.19. Subsection 5.19(7)(i) states that the OIM "shall, *to the extent permitted by law*, have unfettered access to all MPD records, policies, Standard Operating Procedures, data, computer databases, and other information necessary to fulfill the duties of the OIM." And subsection 5.19(7)(j) states that the OIM "may, *to the extent permitted by law*, issue subpoenas for the purpose of compelling testimony or receiving documents necessary to fulfill the duties of the OIM."

As our memo of August 21, 2020 noted, this phrasing was not accidental or an oversight; it was intentionally used by the Alder Workgroup and the Common Council due to legal issues and uncertainties that our office identified related to the OIM's access to records under the Public Records Law and its subpoena authority under other Wisconsin Statutes. Rather than attempt to resolve those questions and uncertainties, the Common Council chose to modify the OIM's authority as to both records and subpoenas with the term "to the extent permitted by law." Wisconsin law and City ordinances have not provided any more specific guidance regarding the authority of police oversight entities since the creation of the ordinances.

However, "to the extent permitted by law" necessarily incorporates all applicable state and federal laws and applies it to the OIM's duties and authority. This includes laws related to open and active investigations, subpoena authority, and personnel records which make clear that the OIM's access to records is not completely unfettered and its subpoena authority is not absolute.

In an attempt to clarify the OIM's access to MPD records, the City's first Independent Monitor and MPD worked to develop a Memorandum of Understanding (MOU) with the assistance of the OCA. The MOU is posted on the OIM's website and is attached, and continues to be in effect. It identifies several categories of MPD records that are available to the OIM with or without redactions, records that may be shared with the OIM but kept confidential, and records that may require notice to employees before they can be shared.

Notably, Section D of the MOU notes that confidential records may be shared with the OIM when the records relate to cases "that are open and active and under investigation by Madison Police Department." Section D of the MOU also notes that the Public Records Law may require notice to MPD employees before personnel records are shared with the OIM and that the balancing test of the Public Records Law may need to be applied to requests for certain records.

As further outlined below, the investigation into the death of Corey Ruiz is an open and active investigation being conducted by the Division of Criminal Investigations. It is not an investigation by the Madison Police Department. Therefore, the MOU previously executed by the OIM and MPD does not authorize MPD's release of investigation records related to this officer-involved death before the DCI investigation is complete.

IV. STATE LAW REQUIRES AN EXTERNAL CRIMINAL INVESTIGATION FREE OF INTERFERENCE

Wis. Stat. § 175.47 was adopted by the Wisconsin Legislature and signed into law by the Governor in 2013. Subsection (2) of that law states that each law enforcement agency must create a written policy governing the investigation of officer-involved deaths that involve a law enforcement officer. Subsection (3)(a) states that each such policy must require an investigation conducted by at least 2 investigators who are not employed by the law enforcement agency involved in the officer-involved death.

MPD's policy regarding investigations of officer-involved deaths is a Standard Operating Procedure titled "Officer Involved Deaths and Other Critical Incidents" which is posted on the MPD website. The SOP implements the statutory directive by stating "The outside agency lead investigator has statutory authority to oversee and direct the investigation."

Wis. Stat. § 175.47(3)(c) states that each law enforcement agency policy "may allow an internal investigation into the officer-involved death if the internal investigation does not interfere with the investigation conducted under par. (a)." MPD's policy is to not initiate an internal investigation by its Professional Standards and Internal Affairs Unit (PS&IA) until the outside investigation has been completed and the District Attorney has made their determination whether to charge the officer with any crime, as the District Attorney may wish to reopen any part of the investigation or ask for additional investigation. The purpose of a PS&IA investigation is to determine whether an officer complied with MPD’s training standards, codes of conduct or standard operating procedures, and whether any disciplinary action may be warranted.

The state statute requiring an outside investigation of an officer-involved death was enacted long before the City of Madison created the OIM and PCOB. At the time the reference to “internal investigation” meant only the law enforcement agency’s PS&IA investigation and did not contemplate the role of an Independent Police Monitor. While MPD’s policy cannot bind the OIM, the statute establishes the primacy and the priority of the outside criminal investigation being completed without the risk of interference from other agencies, including both MPD and the OIM. This is a type of statutory state preemption and a local ordinance cannot override or supersede that state mandate.

In accordance with Wis. Stat. § 175.47, and as it has done in the past, MPD has chosen the Division of Criminal Investigation (DCI) in the Department of Justice to complete the external investigation. After DCI completes its fact finding, it turns its file over to the Dane County District Attorney’s Office. Under Wis. Stat. § 978.05, only a District Attorney can determine whether to charge any officers involved in an incident with any crime related to unreasonable or unjustified use of force.

The primacy of the outside criminal investigation is underscored by its legal significance and process. It is the only mechanism to determine whether an officer may be charged for a potential crime that may result in conviction and sentencing which could include imprisonment. Therefore it is first in the hierarchy of assessing potential accountability. After the investigation is complete for that purpose, other accountability processes may be pursued including PS&IA and OIM investigations, discipline by the Police Chief or Police and Fire Commission, and civil litigation.

A criminal investigation and any subsequent prosecution are also subject to strict rules of evidence, legal standards and a high burden of proof. Any mistakes made during any phase of the investigation can jeopardize the integrity of an investigation and compromise the District Attorney’s ability to successfully prosecute any involved officer.

Those factors require a delay in MPD or DCI providing investigative records to the OIM. While the Independent Monitor, the Police Chief, and the public all have a desire for more transparency more quickly, Wis. Stat. § 175.47 requires a delay in MPD sharing its records with the OIM until the DCI investigation is no longer open and active or until DCI determines that sharing specific records will not interfere with its investigation. Interference is not limited to concepts such as obstructing the investigation or compromising evidence but can also mean simply affecting the course of the investigation by requiring DCI to alter its approach to accommodate requests of the OIM or to react to any investigative actions of the OIM.

It is not difficult to anticipate the potential ways in which release of investigative records could interfere with the progress of the outside criminal investigation. Investigative agencies typically have a roadmap for completing investigations that involves review of police reports and forensic evidence as well as a sequence of interviews with witnesses, including the officers involved. At the very least, reviewing evidence to determine whether it can be released to the OIM would take time, attention and resources away from timely completion of the investigation. Release of reports or other evidence could also lead the OIM to take actions that might affect the DCI investigation and its ability to obtain and preserve all relevant evidence.

Investigators and prosecutors must also be mindful of legal and procedural obligations that impact any potential prosecution, including protecting against improperly influencing a possible pool of jurors or other actions that could jeopardize a potential prosecution. Any number of actions taken by the OIM as a result of reviewing investigation records may impact the DCI investigation. The City of Madison or its agencies is not in a position to anticipate or determine how its actions might interfere with the DCI investigation; only DCI can do that.

Madison's ordinances give the OIM an important role in the area of civilian oversight of MPD, but that does not supersede Wisconsin Statutes which make the integrity of the outside criminal investigation the top and most immediate priority. As such, DCI controls the release of investigative records, including any reports or evidence that MPD forwarded to it.

In summary, it is the legal position of the City of Madison that its agencies cannot and will not interfere with an outside investigation of an officer-involved death. A release of MPD records could result in interference in the investigation by MPD as well as the OIM. This means that MPD may not release its investigative reports, records or evidence to the OIM until the District Attorney has deemed the investigation to be complete or until DCI determines that MPD's release of records will not interfere with the DCI investigation. Just as MPD must not attempt to influence or interfere with DCI's investigation or the District Attorney's process, the OIM must do the same.

This does not preclude the OIM from initiating other aspects of its own investigation at the same time as the DCI investigation as long as it does not interfere with the DCI investigation.

On a related note, our 2020 memo also discusses interviews of officers following critical incidents which are governed by several U.S. Supreme Court decisions. For the public's benefit, I will simply note that the OIM may not compel police officers to sit for an interview while the DCI investigation is ongoing. Based on the court decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967), if any public employee is compelled to answer questions in a disciplinary investigation, the statements provided cannot be used as part of a subsequent criminal prosecution. Until the DCI investigation is closed and the District Attorney has made their determination, the potential exists for either entity to want to re-interview officers following review of other evidence.

V. OTHER RELATED STATUTES

While Wis. Stat. § 175.47 is the statute that most directly governs the availability of records related to officer-involved deaths, I am addressing several other statutes that generally govern release of public records and that are cited in the Frequently Asked Questions posted on the City's website. The shorthand format of the FAQ document appears to have prompted some questions and confusion among the public which this Formal Opinion provides an opportunity to address.

Wisconsin's Public Records Law outlines the categories of governmental records that are open to inspection by the public and it imposes some limitations on records related to both investigations and to public employees. Each City agency is an "authority" as defined by Wis. Stat. § 19.32(1). MPD is an authority and retains custody of its records and the OIM is an authority and retains custody of its records. When an entity seeks records, it is treated as a "requester" as defined by Wis. Stat. § 19.32(3). An agency is an authority as to its records but that status does not affect its treatment as a requester under the Public Records Law.

The Public Records Law also carves out additional access to records in some cases for individuals requesting records related to themselves. This is sometimes why we loosely define categories of requesters as 1) employees seeking their own records and 2) "everyone else." Madison ordinances regarding the OIM's access to records is subject to the Public Records Law and other statutes because, as noted above, the ordinance refers to unfettered access "to the extent permitted by law."

The Public Records Law is contained in Wis. Stat. §§ 19.32 – 19.39. Wis. Stat. § 19.35(1)(am)1. provides that not even an individual seeking public records related to themselves is entitled to records that are maintained in connection with an investigation or potential court hearing. In addition, Wis. Stat. § 103.13(6)(a) states that an employee shall not have access to their personnel records when they are related to the investigation of possible criminal offenses committed by the employee. If an individual with greater rights cannot access their own investigation record, it follows that a requester with lesser legal rights cannot access those records either.

More to the point, Wis. Stat. § 19.36(10)(b) applies to all requesters and states that access shall not be provided to "Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation." This is known as the "open and active investigation" exception and it is a well-established rule that has been routinely enforced by courts over the years. While the MOU between MPD and the OIM allows the OIM to obtain MPD records of open and active investigations by MPD, the current investigation is being conducted by DCI, not by MPD. The records of MPD are actually records of DCI's open and active investigation and therefore cannot be released until that investigation is complete.

These specific statutes prohibit the release of MPD investigative records at this time. But in addition, the Public Records Law includes a balancing test which helps to analyze when records should be released, withheld or redacted when more specific statutes do not apply. Records may be withheld if the public interest favoring nondisclosure of records outweighs the strong public interest in disclosure.

In this case there is certainly a strong public interest in disclosure of the records, not only to assist the OIM in performing its duties but in providing information and transparency to the public. But this interest is outweighed by the stronger public interest in ensuring fair and impartial investigations. The corner stone of the judicial process is investigation by police, a review of that investigation by the district attorney to decide charges and a fair and impartial jury as judge.

Moreover, our judicial process designates one investigating body. While law enforcement agencies may request mutual aid of other agencies in certain circumstances there is always a lead agency in charge of the investigation. There is not, for example, three law enforcement agencies each conducting their own investigation and each referring charges to the district attorney over the same incident. In officer involved shootings, Wisconsin law designates a lead agency which, in this case, is DCI, and that lead agency must be able to protect the integrity of the investigation. Therefore, the public interest prong of the balancing test also advises that MPD records cannot be released while the case remains open and active.

VI. GUIDANCE REGARDING MPD RESPONSE TO OIM SUBPOENA DUCES TECUM

Based on the analysis above, we conclude that MPD cannot provide to the OIM, either in response to a records request or a subpoena, any investigative reports, records or evidence related to an officer-involved death until the completion of an outside investigation and determination by the District Attorney that the case is no longer open and active. The only exception would occur if DCI determined that some specific records could be released without interfering with its investigation. Until the District Attorney makes his determination, MPD should provide a response to the subpoena consistent with this analysis.

Below is a list of the items requested by the OIM's Subpoena Duces Tecum and which cannot be released at this time because they are all related to the officer-involved death incident. These responses assume that records actually exist for each category described but it may be that MPD does not possess any such records.

a. All incident reports, supplemental reports, use-of-force reports, and after-action reports concerning the officer-involved shooting and death of Corey Ruiz.

b. All body-worn camera and dash-camera recordings, audio recordings, radio traffic, and 911 or dispatch records related to the incident.

c. All internal affairs and administrative investigation files, including witness statements, officer statements, and investigative summaries, related to the incident.

d. All forensic, ballistic, autopsy, and crime-scene reports related to the incident.

e. All photographs, diagrams, and physical evidence logs related to the incident.

f. All communications, correspondence, memoranda, and transmittal records between MPD and the Wisconsin Department of Justice Division of Criminal Investigation (DCI) concerning this matter, including a complete copy of every record, document, and item of evidence MPD provided to DCI in connection with this matter.

g. Any other records, data, or materials in MPD's possession, custody, or control concerning the incident that are responsive to OIPM's original request of 07-22-2026.

The OIM's subpoenas also requests the following information:

h. The name(s), badge number(s), and assignment(s) of all MPD officer(s) involved in the shooting and death of Corey Ruiz, along with the personnel and training records of said officer(s).

The name of the officer who fired his weapon has been released by DCI and can be confirmed by MPD. Our office is in the process of reviewing the other information requested by this item to confirm that it would not interfere with the outside investigation. We will advise MPD whether any of those materials can be shared with the OIM. If any of the materials can be shared that would occur after the notices which are required by the statutes governing the release of personnel records are provided to the officers.

I hope this information is helpful. Please contact me if you have any questions.

Office of the City Attorney

Michael R. Haas, City Attorney **Patricia A. Lauten, Deputy City Attorney**

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MEMORANDUM

TO: Mayor Satya Rhodes-Conway
All Alders

FROM: Michael Haas, City Attorney

DATE: August 21, 2020

RE: Independent Police Monitor/Civilian Oversight Body Discussion Topics

<u>Background</u>

At the request of several alders, I am providing this summary of legal, policy and administrative issues related to the proposed ordinances establishing an Independent Monitor and Civilian Oversight Board. The draft ordinances are significant in their scope and, in some instances, in their departure from current City practices and procedures. I hope that this memorandum will assist policymakers and the public in understanding the intent of the ordinances and the policy choices presented by them, including specifically the policy choices presented by provisions that may differ from traditional City practices and procedures. It is important that the Council and community have a shared set of expectations regarding the role, authority and operations of the Independent Monitor and Civilian Oversight Board as well as the possible limitations on that authority under applicable laws.

As you are aware, much of the substance of the proposed ordinances was recommended by the MPD Policy and Procedure Review Ad Hoc Committee. To the extent possible, the Alder Workgroup which created the draft ordinances committed to simply converting the Ad Hoc Committee's recommendations into draft ordinances for the Council's consideration. With regard to several items, however, the Ad Hoc Committee did not offer specific recommendations or did not address potential legal or administrative issues or complications. In addressing these issues, the Alder Workgroup obtained further feedback from some Ad Hoc Committee members who attended the Workgroup meetings and reviewed similar ordinances in other communities throughout the country, sometimes borrowing from those models and in other instances creating a different solution.

As a preliminary matter, there is much information available about citizen oversight of police departments and various models enacted in other communities on the website of the National Association for Civilian Oversight of Law Enforcement (NACOLE) at https://www.nacole.org/. Furthermore, the Workgroup benefitted from receiving information and input directly from Brian Carr, President of NACOLE, including information related to how other cities have arranged and organized police oversight systems. The information received from NACOLE is included in the Legistar file. A good overview of police oversight is provided in a 40-minute podcast interview with Mr.Carr at this link: http://www.criminalinjusticepodcast.com/blog/2018/10/30/what-civilian-oversight-needs-to-succeed. In the interview, Mr. Carr discusses various models of oversight and several key considerations in structuring oversight entities.

As further described below, the Workgroup created draft ordinances that propose establishing the Office of the Independent Police Monitor and the Police Civilian Oversight Board. The Monitor and Board would have the ability to both address individual complaints and to analyze broader trends and data and make policy recommendations to improve MPD practices and procedures. This type of oversight system is similar to oversight systems created for the same purpose in other cities.

Because our Office staffed the Alder Workgroup meeting and researched various similar ordinances nationwide, we have been asked to outline some of the key legal, policy and administrative issues and choices that are presented in the draft ordinances and which policymakers may wish to consider. In some cases the draft ordinances resolve these issues and in other cases the resolution is left to future implementation and actions of the Monitor and Oversight Board. This memorandum is intended to help inform discussion and consideration, not to suggest a specific policy direction or make a recommendation regarding adoption of the ordinances.

Policy and Legal Considerations Regarding Key Provisions

1. Independence of Police Monitor: The draft ordinance creates an Office of Independent Police Monitor, led by a full-time Independent Monitor, which would be a full-time managerial City position subject to a 5-year contract, similar to other comparable positions in Compensation Group 21. The Office's proposed budget resolution includes authority for the Monitor to hire two additional staff, retain independent investigators and legal counsel, and appoint and pay for attorneys to represent complainants before the Police and Fire Commission (PFC), subject to specific limitations. The Monitor's authority includes a substantial amount of discretion related to initiating investigations, issuing subpoenas, making recommendations related to discipline and changes to MPD's policies and procedures, and determining areas of research and data analysis that are pursued.

   The draft ordinance provides that the Monitor would be recruited and appointed by a Board consisting of 11 members and 2 alternates (the Board's appointment process is outlined below), with the assistance of the Human Resources Department and Council staff. The appointment of the Monitor would be subject to confirmation by the Common Council. In between Board meetings, a three-member Executive Subcommittee of the Oversight Board would be required to meet at least monthly in order to provide feedback and direction to the Monitor.

The Ad Hoc Committee stressed the importance of independence of the Monitor from the Police Department, which is also a key recommendation of NACOLE. The Ad Hoc Committee did not address supervision of the Monitor or make a recommendation regarding this issue. The Workgroup concluded that the intent of the Ad Hoc Committee to establish independence could be best implemented by providing for supervision by the Oversight Board as described in the preceding paragraph. To ensure this independence, the draft ordinance includes a provision stating that no City employee or official shall attempt to use their political or administrative position to unduly influence or undermine the independence of the Monitor or any employee of the Office of Independent Monitor.

Having a city employee hired and supervised by a city board would be relatively unique arrangement within the City and, to a large degree, different from oversight models nationwide. Within the City, the majority of managerial employees are hired and supervised by the Mayor, with the notable exceptions of the Police Chief (PFC), Fire Chief (PFC), and Library Director (Library Board). In those cases the Mayor still has a reporting and accountability role in establishing consistent performance and service standards and Citywide initiatives, Nationwide, most of the other police oversight ordinances reviewed by the Workgroup place the Monitor under the supervision of the Mayor or the municipality's chief executive officer such as the City Manager. In placing the Monitor under the supervision of the Board, the Workgroup considered similar structures used in San Jose, Syracuse, and Eugene. The Council may want to consider whether additional detail about the relationship between the Monitor and the Board would be helpful.

2. <u>Investigation Authority</u>: The draft ordinances provide that the Monitor and the Oversight Board may conduct independent investigations of all Police Department personnel, including the Police Chief. Since conducting investigations requires a specific skill set, particularly if it involves the exercise of subpoena power and obtaining sworn statements, and those skills and experience are different from that required for data analysis, review of policies, community engagement, research and creating reports (duties also assigned to the Monitor), the proposed ordinances and budget appropriations include funds for the Monitor to retain investigators to assist with investigations. The proposed ordinances and accompanying proposed budget amendment would also create one Data Analyst position and one Office Administrator position to assist the Monitor with other duties, including duties related to investigations.

   The draft ordinances provide that both the Independent Monitor and the Oversight Board would have subpoena authority. The Alder Workgroup had significant discussion regarding this provision. In his podcast interview, Mr. Carr of NACOLE stated that while subpoena authority is often a priority of community organizations and policymakers, it does not always accomplish what the public may expect. This is partly due to the fact that all public employees, including police officers, have certain rights guaranteed by the Fifth and Fourteenth Amendments of the Constitution, which have been further recognized by decisions of the U.S Supreme Court. Due to the decisions which established them, these rights are known as *Garrity rights, Loudermill rights,* and *Weingarten rights*. Thus, it may be important to briefly consider these potential limitations so that policymakers and the public understand the framework within which the Monitor and Board will be exercising subpoena authority.

Under *Garrity*, a public employee may be compelled to answer questions as part of a disciplinary investigation or face termination, but any such statements cannot be used as part of a subsequent criminal prosecution. The *Loudermill* decision requires due process before a public employee can be dismissed from their job, meaning that the employer must offer a pre-termination meeting with the affected employee at which the employer presents the grounds for termination and the employee is given the opportunity to respond. The *Weingarten* decision ensures that any unionized employee has the right to request union representation for any investigatory interview conducted by their employer when the employee has a reasonable belief that the discussion could lead to disciplinary action.

These employee rights exist under federal and state law whether or not they are specifically cited in the ordinances and certainly they are applied in other municipalities which exercise civilian oversight of police departments. These rights must be followed during any investigations that might be conducted by the Monitor or Oversight Board and those entities would need to be mindful of, and comply with, these employee rights. It may also be useful to note that, under Wis. Stat. § 175.47, all officer-involved shooting deaths are investigated in the first instance by an outside law enforcement agency rather than by MPD, and that the Monitor would not be entitled to participate in such investigations.

These rights are also relevant to the Workgroup's discussion regarding the subpoena authority of the Monitor and the Oversight Board. Subpoenas typically are not used in personnel investigations because employees are required to cooperate. Except for the general phrase "for the purpose of compelling testimony or receiving documents" necessary to fulfill their duties, the ordinance does not specify the specific instances for which a subpoena may be issued by Monitor or Board. Our Office advised the Workgroup that there is a potential that an officer could challenge the legality of a subpoena if the Monitor or Oversight Board is involved in a disciplinary investigation that is simultaneously being conducted by the Police Chief through Professional Standards and Internal Affairs, and that we could not guarantee that a court would uphold the validity of such a subpoena.

Because there have been no Wisconsin court decisions related to the actions of an Independent Police Monitor, the Alder Workgroup decided to simply authorize the Monitor and Oversight Board to issue subpoenas "to the extent permitted by law" for the purpose of compelling testimony or receiving documents necessary to fulfill their duties. This approach leaves the development of subpoena authority, and any potential challenges to it, to the judgment and experience of the Monitor and Oversight Board.

In a broader sense, the priority of our Office is to protect the validity of disciplinary actions of the Police Department and the PFC, as well as any potential criminal investigations, and it would be important for the Monitor and Oversight Board to conduct any investigations with that goal in mind. Under state law, officers cannot be suspended, reduced in rank or dismissed unless there is a finding of just cause by the Chief and in contested discipline matters the PFC. The just cause standards include procedural requirements such as, before filing any charges, making a reasonable effort to discover whether the officer violated a fair and just rule or order, as well as discovering substantial evidence that the officer violated a rule or order. The Monitor and Oversight Board must take care to be cognizant of all of the "just cause" requirements under Wis. Stat. § 62.13(5)(em) to avoid inadvertently jeopardizing any subsequent disciplinary action or criminal investigation by inviting a procedural challenge.

Just this week the New Jersey Supreme Court held in Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark that the City of Newark's oversight ordinance conflicted with state law to the extent it authorized the oversight board to conduct investigations of citizen complaints at the same time that the police department is conducting an internal affairs investigation. The Court also held that the oversight ordinance could not confer subpoena authority on the oversight board.

Regarding both issues, the Court's rationale was based on very detailed interpretations of New Jersey state law and Newark's oversight ordinance, which are different from Wisconsin law and the proposed ordinances. As a result, we cannot say that the results would be the same if a legal challenge is brought regarding investigations of the Monitor or Oversight Board as the issues and arguments would be different, and the legal findings in that decision would likely have limited applicability in such a case. We wanted to note this decision, however, simply to highlight that subpoena and investigative authority has been and may continue to be a topic of litigation as oversight entities become more widespread throughout the country.

3. Exclusion of Individuals with Police Ties: The Ad Hoc Committee recommended that the Monitor not be an individual formerly employed by MPD but did not otherwise disqualify individuals who had worked in law enforcement or were related to law enforcement officers, and it placed no restrictions on staff of the office, outside investigators or Oversight Board members. NACOLE has published core competencies for civilian oversight practitioners which include knowledge of policing and law enforcement policies and procedures (https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/61/attachments/original/1454352545/Core-Competencies-for-Civilian-Oversight-Practitioners-20110114.pdf?1454352545).

   The Workgroup discussed disqualifying factors at length. The Workgroup sought to ensure that the Monitor's Office and Oversight Board would not be subject to a bias in support of MPD or its personnel. The Workgroup recognized that individuals with law enforcement background may bring different expertise and perspective about policing, but determined that the risk of potential bias outweighed the potential expertise that such individuals might bring. The Workgroup was also aware that the restrictions limit the Monitor's discretion in hiring supporting staff and outside investigators.

   After discussing these factors, the Workgroup recommended prohibiting some individuals with past experience in policing or who are family members of law enforcement officers from serving as the Independent Monitor, an employee of the Monitor's Office, an outside investigator, or a member of the Oversight Board. The

Monitor, staff, outside investigators and Board members shall have never been employed by the MPD, be an immediate family member of a current or former MPD employee, or have worked in law enforcement in Wisconsin in the ten years prior to appointment.

"Immediate family member" is defined as an individual's spouse or designated family or registered partner, or an individual's relative by marriage, lineal descent or adoption." While other municipalities include some restrictions on the involvement of former law enforcement officers, the "immediate family" definition in the proposed ordinance is fairly broad and would exclude, for instance, the grandchild of a former MPD employee, or the niece or nephew of a former MPD employee who had been separated from the Department for many years.

4. Fee Shifting to Prosecute Complaints: The proposed ordinance provides that the Monitor may appoint legal counsel to provide representation to aggrieved individuals in presenting and litigating complaints against MPD personnel with the PFC, to the extent the Monitor concludes that those complaints have arguable merit. In doing so, the Monitor shall appoint an attorney selected by the individual from a list of attorneys approved by the Oversight Board. Attorneys' fees paid pursuant to this directive shall not exceed $15,000 per complaint.

   The Ad Hoc Committee recommended that the Monitor have the authority to appoint legal counsel to represent complainants before the PFC but was silent as to payment of legal fees, although several members of the Ad Hoc Committee stated they believed that the Committee intended that the City should pay for such representation. It is important to note several restrictions on the payment of legal fees. First, it only applies to the prosecution of complaints before the PFC, not to representation related to a lawsuit against the MPD, its officers or the City. Second, the Monitor must determine that the complaint has "arguable merit" in order to authorize payment of attorney fees. Third, fees are limited to $15,000 per complaint.

   The proposed budget for the Office of Independent Monitor incudes an initial estimate of $50,000 annually to cover legal fees of complainants. As this is a completely new procedure and process the Workgroup acknowledged that it is difficult to predict whether or not $50,000 will be an adequate estimation or will be a sufficient amount in future years to cover these fees.

   Currently there is an ordinance which provides for a fee shifting mechanism for successful complaints filed by citizens and processed by the PFC. MGO § 5.15(2)(c) states:

   > Private Persons Bringing Charges. If a private person brings charges before the PFC and the complaint is successful, the City will reimburse the reasonable legal fees and costs incurred by the private individual. A complaint is successful if the charges are sustained or discipline is imposed. If the PFC found some violation of a legal standard (such as a code of conduct) by the City employee or official but does not sustain the charge or impose discipline, the Council may make a reasonable adjustment in the reimbursement for such findings. Similarly, if the complaint is successful on some claims and not on

others, the Council may make a reasonable adjustment in the fees and costs to be reimbursed.

There may be some legal, liability and ethical considerations related to a City employee such as the Monitor recommending specific attorneys to represent complainants before the PFC, who in turn may also pursue separate litigation against the City. For example, if the complainant subsequently alleges that the attorney provided inadequate or ineffective representation, they may attempt to place responsibility on the Monitor or even pursue a monetary claim against the City due to the complaint being unsuccessful. Also, there is certainly the possibility and even likelihood in more significant cases that an attorney appearing before the PFC may also file a lawsuit against the City, resulting in the City effectively paying an attorney in preparing to sue the City.

Part of the Ad Hoc Committee's intent appears to be to ensure that complainants can navigate the PFC process and have a fair opportunity to carry their burden of proof, given that the PFC does not independently investigate complaints. The concern appears to be that complainants, especially those of limited means, must often represent themselves against an attorney representing the officer.

It is difficult to predict what, if any, impact the ordinance would have on the frequency of complaints filed with the PFC. The current fee shifting provision has been in place for three years and has yet to be used. The Monitor's determination of "arguable merit" is intended to act as a filter against frivolous complaints. Also, currently minor complaints are typically resolved administratively and do not reach the PFC, and the PFC hearing process can be prolonged and time-consuming.

5. Police Records: The draft ordinance includes a provision allowing the Monitor "unfettered access" to MPD records, policies, data, computer databases, and all other information necessary to fulfill the Monitor's duties, and requiring the Monitor to keep such records confidential except to the extent necessary to fulfill their responsibilities. There may be issues that arise under the Public Records Law which governs access to or withholding of certain personnel records. Also, MPD uses several databases of outside federal and state agencies that may not be shared outside of law enforcement personnel.

   Similar to the issue of subpoenas authority, the Workgroup decided to resolve this issue by modifying the Monitor's unfettered access to MPD records with the phrase "to the extent permitted by law."

6. Oversight Board Membership and Authority: The draft ordinance creates a Civilian Oversight Board consisting of 11 regular members and 2 alternates, serving four-year terms except for some of the initial members who would have two- or three-year terms in order to establish staggered terms. The Ad Hoc Committee recommended, and the draft ordinance requires, that membership include a diversity of membership, including racial and ethnic backgrounds, age, socioeconomic status, gender, geographic residence in the City, work experience, and lived experience with homelessness, mental health, substance abuse and/or arrest or conviction record.

The draft ordinance provides that at least one member be Black, Asian, Latinx, Native American, a member of the LGBTQ community, as well as that at least one member be affiliated with organizations in the field of mental health, youth advocacy, and AODA, and at least one member have an arrest or conviction record. The draft ordinance incorporates those membership requirements but the Workgroup has separately recommended in its Final Report that the Board consist of at least 50% members who are Black.

Our Office has received several inquiries as to whether there is a legal concern with the requirement that the Oversight Board include a minimum number of members from various racial backgrounds. Because the case law prohibiting racial quotas relates to educational and employment opportunities, we cannot conclude for certain that a court would extend similar analysis to such requirements for a Civilian Oversight Board There are several potential distinctions that can be drawn between purpose and legality of the educational and employment affirmative action programs at issue in previous cases and the purpose of ensuring a diverse police oversight board, which is to enhance overall public safety by ensuring that the Board includes representation from historically disadvantaged communities and those who have experienced interactions with MPD. Also, similar provisions are included in ordinances of other communities.

To eliminate any legal concerns related to this issue, the Council could modify the language to state that the membership “should strive” to include the specified racial makeup. In any event, the Council should decide whether to incorporate the Workgroup’s recommendation to change the draft ordinance to require that at least 50% of the Board’s membership be individuals who are Black.

In its Final Report, the Ad Hoc Committee has also proposed a list of 9 designated organizations which would each be invited to submit names of three individuals to be nominated for membership on the Oversight Board. If the Council adopts the Final Report, these 9 organizations will submit nominations for the initial Oversight Board. However, other organizations can also submit nomination through the normal Board, Commission, and Committee membership process. Further, the ordinance requires the list to be reviewed and potentially revised every two years to account for organizations which may have either dissolved or created and actively working on relevant issues.

The Mayor and Common Council would appoint one individual nominated by each organization, and the Mayor and Council would each appoint an additional regular member and an alternate, with all appointees requiring Council confirmation. The involvement of the designated organizations in nominating most appointees to serve on the Board would be different from the normal appointment process for Boards, Commissions and Committees.

The draft ordinance provides that Board Members would receive a stipend and encourages the City to consider providing other forms of support for Board members, such as child care, to ensure that socioeconomic status is not a barrier to serving on the Board. Members would also receive training regarding police practices and procedures, use of force, mental health, AODA, problem-oriented policing, confidentiality requirements, ethics, public records and open meetings requirements. Under the ordinance, the Board must meet at least quarterly and the Monitor would serve as the Board's Executive Secretary. Further an employee from MPD and the Office of City Attorney are required to attend all Board meetings.

The Board would have significant authority but ultimately, with the exception of its supervision of, directions to, and evaluation of the Monitor, the end result of its decisions would be recommendations rather than binding action. This includes recommending the individual to be hired as the Monitor to the Council, completing an annual review of the Police Chief, and making policy recommendations.

The Board would have the authority to issue subpoenas and conduct investigations on its own independent of the Monitor. The results of those processes would be recommendations and not final determinations. The Board is also charged with conducting community outreach and completing an annual public report to the Mayor and Council containing an assessment of the performance of the Monitor, the Board and MPD.

I hope this summary helps to inform the Council's consideration of the proposed ordinances related to civilian oversight. Our Office is available to discuss this memorandum if there are any questions.

Memorandum of Understanding between the Madison Police Department and the Office of the Independent Police Monitor regarding access to MPD Records and Information

A. THE OFFICE OF THE INDEPENDENT MONITOR

The Office of the Independent Police Monitor ("OIM") was created for the purpose of providing civilian oversight of the Madison Police Department ("MPD") and ensuring that the MPD is accountable and responsive to the needs and concerns of all segments of the community, thereby building and strengthening trust in the MPD throughout the community. The OIM is managed and directed by the Independent Monitor ("the Monitor"), a full-time employee of the City of Madison, recruited and appointed by the Police Civilian Oversight Board ("PCOB") through a broad community-based outreach, and finally confirmed by the Common Council. The Monitor is responsible for ensuring that the duties of the OIM are fulfilled in consultation and collaboration with the Board, per MGO 5.19(2).

B. OIM AUTHORITY TO ACCESS TO MPD RECORDS

The OIM's authority to access MPD records derives from Section 5.19(7)(i) of the Madison General Ordinances which states that "[t]he OIM shall, to the extent permitted by law, have unfettered access to all MPD records, policies, Standard Operating Procedures, data, computer databases, and other information necessary to fulfill the duties of the OIM." Additional authority comes from Wisconsin's Public Records Law. MPD agrees to provide a timely reply to the Office of the Independent Monitor (OIM) to requests for records held and created as public records by the MPD to advance the purpose of the OIM as enacted by Common Council. This timely reply may require the viewing of records in an office at an MPD designated area.

C. TYPES OF RECORDS HELD BY MPD

Attached to this MOU is a list of records held by MPD so the OIM will know what records are available. This list may be updated and modified without having to amend the MOU.

D. RELEASE OF RECORDS BY CATEGORY

Release For Public Disclosure with Or Without Redaction (Green Flag)

Records permissible for immediate disclosure to the public, by the OIM, without further review or consultation with MPD. Records for immediate release may have redactions to the record and contain only such information that would, subject to MPD's custodial authority, be released to the public under the balancing test as set forth in Wisconsin law and/or in accordance with the Wisconsin Public Records laws, Wis. Stat. secs. 19.31-39 or any other applicable State or Federal law. These records may be shared freely amongst OIM staff, the PCOB, other government agencies, and the public through open records requests. The OIM agrees to accept the redactions to these records in order to expedite the duties and obligations of both city agencies. No "reply letter" will be provided to the OIM for these requests unless the OIM requests a letter.

EXAMPLES: arrest information (Newspapers v. Breier, 89 Wis. 2d 417), anonymous crime data, and MPD policies and agreements.

Confidential Records Released Only to The OIM (Red Flag)

Confidential records are records where the information has not been publicly shared or records, in their entirety, that cannot be redacted to make them releasable to the public. This category includes cases that are open and active and under investigation by Madison Police Department. These records contain information that is explicitly barred from public disclosure by law under the balancing test as set forth in Wisconsin law and/or in accordance with the Wisconsin Public Records laws, Wis. Stat. secs. 19.31-39 or any other applicable State or Federal law. Confidential records will not, under any circumstance, be distributed, published, or presented to the PCOB, other government agencies, and/or the public through open records requests. Confidential records are for OIM use only and will be designated as such with a stamp prior to being released to OIM. If OIM finds it necessary to make portions of a confidential document public to fulfill its statutory duties, OIM agrees to provide the document to MPD for redactions such that it would become information the OIM could publicly share. The OIM understands that at the time of the request, some open and active cases may not be able to be redacted to allow public release by the OIM.

EXAMPLES: juvenile information, employee information identified in Wis. Stat. 19.36(10)(a), and records under the protection of a court order of confidentiality.

Personnel Records and Internal Investigations (PSIA)

Release of Personnel Records and Internal Investigation (PSIA) records may be governed by other state and federal laws outside the public records law (including labor law) which may impact either the timing of the record release or the redactions made to the records. For example, in some cases, employee notice must be given before records may be legally released by MPD. In other cases, the discipline process may not be concluded which could impact the employee's rights under State labor law. When

OIM requests a personnel record, MPD agrees to inform OIM of the status of the investigation including any discipline or PFC process. MPD and OIM will work together in good faith to determine when the records can be released and whether they will be processed as confidential or released with or without redactions. In some cases, if other legal proceedings are pending that could be impacted by a public record release, MPD and the OIM agree to consult with the City Attorney's office to prevent any adverse legal consequences for the City. OIM agrees to contact MPD prior to any public (outside OIM) release of any part of an employee's personnel record to allow for discussion, review, appropriate statutory and common law redactions in protection of complainants or witnesses, and to provide the required statutory notice under Wis. Stat. §19.356 before public release. When the OIM requests a personnel record for internal use only with no public release, MPD will provide a courtesy notice to the subject of the personnel record request.

E. ACCESS TO DATA

MPD creates and keeps case and incident information in a records management system. This records management system contains confidential information regarding cases for MPD as well as all consortium members and information from the FBI and other federal law enforcement agencies. MPD cannot release other consortium members' data. To the extent the OIM is asking for MPD data, the release of this data will be governed by the agreement listed above. Confidential data will be released as confidential data and marked in some way in the database itself; this data may not be released by the OIM to anyone. If the OIM requests data that could be released as a public record, the MPD will release the data as a public records request.

F. PROCEDURE OF RELEASE OF RECORDS TO THE OIM

- Request from OIM to Executive Office or Records Custodian.
- MPD response acknowledging OIM request.
- MPD review and determination if the records can be a public release (with or without redaction) or whether they are released as confidential OIM use only in accordance with the public records laws and other laws that govern law enforcement records.
- Confidential records will be stamped stating CONFIDENTIAL RELEASE TO OIM ONLY
- In the interest of faster record processing, OIM and MPD agree to waive the standard reply letter unless either OIM or MPD determine one is necessary for a particular request.
- At any time, an individual may sign an informed consent form for release of records related to themselves that would not otherwise be released to the public. This includes parents or legal guardians for some records related to their children/ward. Wis. Stat. 48.396, 938.396(1)(c)2. To facilitate the release of these records, the OIM can provide MPD with a release from the individual.

- If there is a request made from the OIM that is extremely time sensitive as determined by the OIM, the MPD agrees to make all reasonable efforts to comply with the timeliness of the OIM request. MPD agrees to prioritize all records requested by the OIM.

G. PRIOR NOTIFICATION OF PUBLIC RELEASE OF ACTIVE INVESTIGATIONS AND PERSONNEL RECORDS

Active Investigations.

It is anticipated that some information regarding open and active investigations may be of critical interest to the public, particularly critical incidents, investigations with a high level of public interest, or investigations directly related to an independent investigation conducted by the OIM in accordance with MGO 5.19 (7)(b)1. In an effort to balance the public's need to know with MPD's duty to investigate crimes, to the extent MPD is the investigating agency, the release of information from the OIM may be handled jointly between the Monitor and MPD's Public Information Officer or Assistant Chief of Support & Community Outreach (or designee). Working together, the Independent Monitor and MPD will review the information released to the OIM and the OIM planned public release to determine what information may be publicly released in keeping with state or federal law governing law enforcement records release including release of active investigation information. A representative of the City Attorney's Office may be present at such meetings to provide insight and guidance.

Personnel Records.

The OIM agrees to consult MPD prior to any release if the Independent Monitor decides to include an MPD personnel record as an attachment or exhibit in any investigation, report, or any other document the OIM is creating with the intent to publish, present, or distribute outside the OIM. Once contacted, OIM and MPD will discuss and review the records to determine if any statutory redactions should be made or if redactions should be made to protect those that provide information such as complainants, victims or witnesses.

H. DISPUTE RESOLUTION

Recognizing that communication and understanding is the best way to resolve any disagreements, OIM and MPD agree to engage in regular discussions with the Assistant Chiefs of Investigative & Specialized Services and Field Operations, or their appointees, MPD Director of Data, Reform and Innovation, and the MPD Records Custodian on the matter of Law Enforcement Sensitive Information (LESI) and other information the Monitor may be exposed to which, if known to the public, could endanger officer and individuals' safety or jeopardize MPD's effectiveness in the detection and investigation of crimes. MPD and OIM agree to work cooperatively together, in good faith, to resolve any disagreements regarding this MOU and/or the availability of MPD records to the OIM.

I. AMENDMENTS AND ADDENDUMS

This MOU may be modified or amended, or the provisions waived with the written consent of both the Chief and the Independent Monitor, witnessed by the City Attorney.

This MOU and any of its addendums, appendices, or indexes is a “record” under the Wisconsin Public Records Law and is subject to public disclosure. Wis. Stat. sec 19.32(2).

Shon F. Barnes

01/04/2024

Shon F. Barnes, Chief of Police — Date

Michael Haas

1/2/2024

Michael Haas, City of Madison Attorney — Date

Robert Copley

1/4/2024

Robert Copley, Independent Police Monitor — Date