



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
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Paul M. Ferguson
Assistant Attorney General

October 25, 2016

Dear _____ :

This is in response to your correspondence, received on September 26, 2016, in which you requested "any and all reports, summaries, and results from evidence collected and analyzed by the WI State Crime Lab regarding the hit-and-run death of Richard D. Hochstetler that occurred January 10, 1999." The Department of Justice (DOJ) construes your correspondence as a public records request pursuant to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39.

Please be advised that under Wis. Stat. §165.79(1), "[e]vidence, information and analyses of evidence obtained from law enforcement officers by the laboratories is privileged and not available to persons other than law enforcement officers . . . prior to trial, except to the extent that the same is used by the state at a preliminary hearing and except as provided in s. 971.23 [pre-trial criminal discovery]."

Therefore, the records sought in your those request are not available via a public records request as they constitute records containing information, which are derived from analysis of evidence collected by law enforcement in the investigation of a crime and therefore fall within the purview of Wis. Stat. § 165.79(1).

Upon the termination or cessation of the criminal proceedings, the privilege of the findings obtained by a laboratory may be waived in writing by the department [DOJ] and the prosecutor involved in the proceedings. It is the requester's responsibility to request the waivers. DOJ will not consider granting a waiver until it receives a waiver from the prosecutor. It is your responsibility to obtain that waiver and forward it to DOJ.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul M. Ferguson", with a long horizontal flourish extending to the right.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:pjm