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DISTRICT IV

March 14, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2012AP1616

State of Wisconsin ex rel. Glenn A. Smiley v. Jeffrey Shock
(L.C. # 2012CV322)

Before Sherman, Blanchard and Kloppenburg, JJ.

Glenn Smiley appeals a circuit court order that denied his petition for a writ of mandamus to compel compliance with a public records request he had made to the Jefferson County District Attorney. *See* WIS. STAT. § 19.37(1) (2011-12).¹ Smiley's request sought copies of all police reports or other records pertaining to any surveillance that had been conducted upon him. An

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

assistant district attorney denied the request on behalf of the district attorney on the grounds that most of the records sought were not within the district attorney's possession, and the remaining records were exempt. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

The Wisconsin Statutes set forth "a presumption of complete public access" to government records, in accordance with the strong public policy favoring the maintenance of an informed electorate. WIS. STAT. § 19.31. This policy toward openness, although strong, is not absolute. *Milwaukee Teachers' Educ. Ass'n v. Bd. of Sch. Dirs.*, 227 Wis. 2d 779, 787, 596 N.W.2d 403 (1999). The test for whether a requester is entitled to copies of documents being sought under the public records law is whether: (1) there is any statutory provision exempting the documents from inspection under the open records law; (2) the documents are subject to common law limitations on disclosure; or (3) the public interest in keeping the documents confidential outweighs the public's presumptive right to have access to the documents. *C.L. v. Edson*, 140 Wis. 2d 168, 181-82, 409 N.W.2d 417 (Ct. App. 1987); *see also* WIS. STAT. § 19.35.

Under a common law exception to the public records law, data collected and placed into a prosecutor's files during the course of a criminal investigation are not open to indiscriminate public view. *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 436, 477 N.W.2d 608 (1991). This exception protects any and all documents that are integral to the investigation. *Nichols v. Bennett*, 199 Wis. 2d 268, 274-75 and n.4, 544 N.W.2d 428 (1996).

Smiley has failed to make any showing that the surveillance documents he seeks were not part of a criminal investigation. To the contrary, Smiley's assertions that the documents might have provided exculpatory evidence fully support the conclusion reached by both the district

attorney and the circuit court that the documents were exempt from the public records request because they were part of prosecution files.

We do not address Smiley's additional arguments relating to due process or discovery violations because this case is before us on a petition for mandamus, not review of his criminal case.

Accordingly,

IT IS ORDERED that the circuit court order denying Smiley's petition for a writ of mandamus is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals