COURT OF APPEALS
DECISION
DATED AND FILED

January 15, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 96-3690

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. NORMAN O. BROWN, AND CLAY RICH,

PETITIONERS-APPELLANTS,

V.

CATHY ENNIS,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: MARK A. FRANKEL, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J. and Deininger, J.

PER CURIAM. Norman Brown and Clay Rich, inmates at Racine Correctional Institution, appeal from an order dismissing their mandamus petition under § 19.37, STATS., for access to certain prison records. We affirm because we

conclude that the appellants' original request[1] was insufficient under the Wisconsin open records law.[2]

Brown and Rich submitted two open records requests to RCI's registrar, Cathy Ennis. The requests read as follows:

> Request any and all books, papers and records relating to the treatment programs at Racine Correctional Institution, also requesting any and all monies for inmates participating in the AODA, Anger management, domestic violence programs, How is it distributed; does it discontinue [sic] or is it given back to its sponsor if the inmate doesn't complete the program? If not where is it going[?]
>
> Request any and all books, papers and records relating to Inmates phones at Racine Correctional Institution, including contractual papers and records regarding slush funds and rebates and any activity operated at R.C.I. since its opening.

Under § 19.35 (1)(h), STATS., a request under open records law "is deemed sufficient if it reasonably describes the requested record or the information requested." However, "a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request." ***Id***. Little published precedent in Wisconsin explains the requirements for a sufficient request under § 19.35 (1)(h). However, federal court decisions under the Freedom of Information Act (FOIA) are persuasive authority for the interpretation of similar language in the state statute.

[1] By a previous order, dated November 28, 1995, we directed the circuit court to accept this case for filing if Brown and Rich proved their indigency because we concluded that "factual determinations" were necessary. At that point, however, the parties did not brief the matter of the reasonableness of the request and the circuit court had assumed it, denying Brown and Rich's motion to waive fees testing the merits of the action.

[2] Because we decide this case on the sufficiency of the record requests, we need not consider Brown and Rich's arguments that Ennis failed to make the records available and that they are entitled to costs and damages or to punitive damages. ***State v. Castillo***, 213 Wis.2d 488, 492, 570 N.W.2d 44, 46 (1997).

Racine Educ. Ass'n v. Racine Bd. of Educ., 129 Wis.2d 319, 326, 385 N.W.2d 510, 512 (Ct. App. 1986).

Under FOIA, as interpreted by federal courts, the analogous requirement in federal law for "identifiable records" "calls for a reasonable description enabling the Government employee to locate the requested records." ***Irons v. Schuyler***, 465 F.2d 608, 612 (D.C. Cir. 1972), *cert. denied,* 409 U.S. 1076 (internal punctuation and citation omitted).

The requests here fail because they inadequately describe the records requested, do not sufficiently identify the subject matter, and are unlimited in time. The request for information about "treatment programs at Racine Correctional Institution" may or may not be restricted to specific programs (AODA, anger management, domestic violence). It also may or may not be restricted to information about "monies" and the apparent query about "How is it [presumably, money] distributed; does it discontinue [sic] or is it given back to its sponsor if the inmate doesn't complete program? If not where is it going[?]" The request may encompass records dating back to RCI's inception.

In answering such a request, a records custodian would have to guess whether to respond restrictively, and supply records about funds distribution and escheatment for current AODA, anger management and domestic violence programs; or whether to respond expansively, and supply records about all aspects of all treatment programs since the programs began. Similarly, in answering the request for inmates' telephone records, the records custodian would have to guess whether to respond restrictively, and supply recent records about contractual papers and "slush funds"—assuming this phrase could be understood—or whether

to respond expansively, and supply records about any activities (relating to inmates' telephones) since RCI's inception.[3]

Because the requests do not conform to § 19.35 (1)(h), STATS., we affirm the circuit court's dismissal of this mandamus action.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

[3] These proceedings aptly illustrate the problem we describe. After much miscommunication between the parties about inspection of the records, Ennis did supply the records to Brown and Rich. Now, they are apparently dissatisfied with the scope of the response.