

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

August 24, 1995

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(1), STATS.

**NOTICE**

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

**No. 94-1238**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**HECTOR CUBERO,**

**Petitioner-Appellant,**

**v.**

**RECORD CUSTODIAN,**

**Respondent-Respondent.**

APPEAL from an order of the circuit court for Dane County: MORIA KRUEGER, Judge. *Affirmed.*

Before Gartzke, P.J., Dykman and Sundby, JJ.

PER CURIAM. Hector Cubero appeals from an order denying his request for damages in a mandamus action. The issue is whether § 19.37(2), STATS., authorizes a \$100 minimum damage award for refusal to provide public records sought under § 19.35(1)(am), STATS. Because the minimum damage award does not apply to requests under § 19.35(1)(am) and Cubero has not

shown that the refusal was wilful or intentional, he is not entitled to damages under § 19.37(2)(b). Therefore, we affirm.

Cubero submitted a public records request to the Racine Correctional Institution Record Custodian for his "Admissions Report." Because the record custodian never responded to his request, Cubero commenced a mandamus action, prompting immediate release of the record. Cubero then sought damages under § 19.37(2), STATS. The trial court denied the request, concluding that requests under § 19.35(1)(am), STATS., are governed by the damage provision of § 19.37(2)(b), not § 19.37(2)(a). We agree.

The issue is whether Cubero is entitled to damages and actual costs under § 19.37(2)(a), STATS., for prevailing in a mandamus action for records under § 19.35(1)(am), STATS. Although § 19.37(2)(a), authorizes such an award, § 19.37(2)(b), provides:

*[i]n any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35(1)(am), if the court finds that the authority acted in a wilful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.*

(Emphasis supplied).

Section 19.35(1)(am), STATS., extends the scope of § 19.35(1)(a), to authorize access to a requester who seeks public records containing "personally identifiable information pertaining to th[at] individual." "Personally identifiable information" is defined as "information that can be associated with a particular individual through one or more identifiers or other information or circumstances." Sections 19.32(1r) and 19.62(5), STATS. Cubero's admissions report contains "personally identifiable information" and it would not have been

disclosed to another inmate.<sup>1</sup> However, § 19.35(1)(am) authorizes disclosure of that report to Cubero.

Section 19.37(2)(b), STATS., limits its damage award to an authority's "wilful or intentional" refusal, rather than authorizing a minimum damage award to a "requester [who] prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35(1)(a)." Section 19.37(2)(a). The plain language of § 19.37(2)(a) applies to record requests under § 19.35(1)(a), STATS. The plain language of § 19.37(2)(b) applies to record requests containing personally identifiable information under § 19.35(1)(am). Because Cubero requested a record containing personally identifiable information, § 19.35(1)(am) applies. Because the damage provision of § 19.37(2)(b) applies to actions under § 19.35(1)(am), in order to recover damages, Cubero must show that the record custodian wilfully or intentionally withheld the requested record. He has not done so.

*By the Court.*—Order affirmed.

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

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<sup>1</sup> A department of corrections' employee averred that portions of an inmate's admission report are confidential and may not be seen by other inmates, but that an inmate may see his own admission report. Cubero denies that this is a record under § 19.35(1)(am), STATS., particularly since the trial court has not examined the record to determine its contents. However, the trial court need not conduct an *in camera* inspection to determine the contents of a document if the title of that document reveals its contents. *George v. Knick*, 188 Wis.2d 594, 599-600, 525 N.W.2d 143, 145 (Ct. App. 1994). Cubero describes the contents of his admissions report as containing "the crime, family history and other details which were published in the media at the time of the crime" and apparently believes that because this information may have appeared in the media it is not a record under § 19.35(1)(am). Nevertheless, it contains personally identifiable information and only he is authorized to view the full record. Sections 19.32(1r), 19.35(1)(am) and 19.62(5), STATS.