

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 9, 1997

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.

NOTICE

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

No. 95-3422

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MARK ANTHONY ADELL,

Petitioner-Appellant,

v.

**MICHAEL SULLIVAN,
PHILLIP KOENIG,
and JAMES A. EHLERT,**

Respondents-Respondents.

APPEAL from orders of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Mark Anthony Adell appeals from the trial court's orders denying his motion for damages and costs in this open records case and denying his motion for reconsideration. Because we hold that the trial court correctly denied damages and costs under §§ 19.35(1)(am) and 19.37(2)(b), STATS., we affirm.

Appellant, an inmate at Racine Correctional Institute (RCI), requested various records about himself. RCI's response was not timely and included only part of appellant's request because the Division of Intensive Sanctions had a portion of his file, which required additional transfer and viewing arrangements. On the basis of this response, appellant filed a mandamus action and thereafter, RCI provided appellant with the records he sought. *See* § 19.37, STATS. Appellant subsequently moved for damages and costs under § 19.37(2)(a), STATS. That section provides in relevant portion:

[T]he court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action ... relating to access to a record or part of a record under s. 19.35(1)(a).

The trial court denied the motion on the grounds that § 19.37(2)(b), STATS., applies. That section provides in relevant portion:

In any action filed ... 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.

Section 19.35(1)(am), STATS., relates to requests, such as that here, by individuals for records "containing personally identifiable information pertaining to the individual." Under this statutory scheme, § 19.37(2)(a), STATS., provides for damages when a requester prevails in whole or in part, but § 19.37(2)(b) provides an exception to the type of information provided by § 19.35(1)(am). Damages in § 19.35(1)(am) cases are to be awarded only when the records custodian ("authority") acts in a wilful or intentional manner. Section 19.37(2)(b).

The State acknowledges that RCI responded slowly to appellant's request. However, it is undisputed that RCI did provide appellant with all the

records he requested. In our analysis, the record does not sustain a finding that RCI "wilfully" or "intentionally" failed to comply with appellant's request. Therefore, we affirm the trial court's order.

By the Court. – Orders affirmed.

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