

WISCONSIN SUPREME COURT
THURSDAY, MARCH 13, 2008
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed circuit court decisions in Waukesha and Ozaukee counties, Judges Mark Gempeler and Thomas R. Wolfgram, presiding respectively.

2005AP1473/2006AP174-75 [WIREdata Inc. v. Village of Sussex](#)

This litigation, which includes cases involving the villages of Sussex and Thiensville and the city of Port Washington, concerns the state's open records law and its application to requests for access to large data bases created by private contractors on behalf of municipalities. The Supreme Court has been asked to consider a number of issues about the scope, timing, procedure, cost and format of electronic records involved in open records requests.

Some background: About six years ago, WIREdata, a subsidiary of the Milwaukee Metropolitan Multiple Listing Service, cited the open records law in asking the three municipalities to provide access to data bases containing property assessment information. The company wanted the data "to assist real estate agents."

WIREdata asked for the information to be provided in the same format used by the municipalities' private contractors. The municipalities denied WIREdata this access, but eventually provided the company with information in a portable document file (PDF) format. The municipalities characterized the intended use as marketing and re-sale of the requested information.

All of the parties filed motions for summary judgment in circuit court, which resulted in somewhat varying decisions after a U.S. 7th Circuit Court 2003 decision in Assessment Techs. Of WI, LLC v. WIREdata Inc.

In the case of WIREdata Inc. v. Village of Sussex, for example, the circuit court granted WIREdata's motion for summary judgment, except for its request for punitive damages. The circuit court held further that WIREdata's request was in the form the open records law required and did not require the creation of a new record. The trial court found that the defendants did not provide a proper response to the valid open records request and that the PDF did not constitute compliance with the open records law nor the 7th Circuit decision.

In the cases of Thiensville and Port Washington, the courts ruled that WIREdata's request was unreasonable in scope and granted summary judgment in favor of the municipalities.

The cases were considered together on appeal, and the Court of Appeals ruled that the open records law allows WIREdata the opportunity to access that database in order to examine and copy the property assessment records, such that the municipalities committed open records law violations when they denied WIREdata such access.

The petitioners, including the private contractors and the village of Sussex, contend the Court of Appeals' decision "places tremendous technological and financial

burdens on municipalities and independent contractors working for the municipalities when confronted with increasingly complex open records requests.”

More specifically, they ask the Supreme Court to review, among other things: if the municipalities in effect denied the request; if third-party consultants are proper recipients of open records requests; if any of the requested information should be confidential, and what fee, if any, should apply to such requests.

WIREdata opposes review, contending that this case involves a straightforward application of the open records law and merely affirms that the government cannot hide its information through computerization of records.

The Wisconsin Department of Justice (DOJ) has filed an amicus brief urging the court to review at least certain aspects of the Court of Appeals’ decision, insofar as it involves access to electronic databases, concerns about confidential information, and the costs of responding to a request involving electronic records databases. The issues of costs and a record authorities’ obligation to protect confidential information deserve the Supreme Court’s attention, DOJ said.