

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WYOMING

In the Matter of the Application of
ANTHONY BOTTON, a/k/a JALIL MUNTAQUIM, 77-A-4283,

AFFIRMATION

Petitioner,

INDEX No. 21,314-13

-against-

BRIAN FISCHER, Commissioner, New York State
Department of Corrections and Community Supervision,

Respondent.

For a Judgment Pursuant Article 78 of the
New York Civil Practice Laws and Rules.

I, TERRENCE X. TRACY, hereby affirm under the penalty of perjury:

1. I am employed by the New York State Department of Corrections and Community Supervision and serve as Counsel to the New York State Board of Parole (“Board of Parole”). Through the enactment of Chapter 62 of the Laws of 2011, the New York State Division of Parole (“Division of Parole”) and New York State Department of Correctional Services were merged to create a new State agency, the New York State Department of Corrections and Community Supervision (“DOCCS” or “the Department”). Prior to the merger that became effective on March 31, 2011, I served as Counsel to the Division of Parole from December 1996. The Board of Parole was a part of the Division of Parole and now is a separate unit within DOCCS subsequent to the merger; I now serve as Counsel to the Board of Parole. I submit this affirmation in accordance with this Court’s *Order* dated May 2, 2013.

2. In its aforementioned order, the Court has requested additional information regarding the types of documents that have been received into petitioner’s case record since January 2009 to present and the bases upon which all or portions thereof are exempt

from disclosure under the Freedom of Information Law. I have been informed by Department staff that the following records have been made a part of the petitioner's case record that has considered by the Board of Parole since January 2009; in lieu of having the petitioner obtain copies of the documents that can disclosed, either with or without redactions, from staff at the facility where he is currently situated, I am providing herewith as exhibits a large number of those documents without charge.

- (a). A letter from the Office of the District Attorney for New York County dated May 16, 2012. This document is exempt from disclosure. Documents submitted to the former Division, or current Department or Board, by the office of the prosecuting district attorney which contain recommendations concerning an inmate's possible release to parole supervision are exempt from disclosure under section 87(2)(g) of the Public Officers Law. See Matter of Grigger v. N.Y.S. Division of Parole, 11 A.D.3d 850 (3d Dept. 2004); Matter of Ramahlo v. Bruno, 273 A.D.2d 521 (3d Dept. 2000). In addition, any documents submitted to the former Division, Board of Parole by a district attorney which contain recommendations concerning an inmate's possible release to parole supervision are exempt from disclosure under section 87(2)(f) of the Public Officers Law and 9 N.Y.C.R.R. §8000.5(c)(2)(i)(a)(3). To disclose the contents of these letters might subject the authors thereof to harm or endanger their families' or staffs' life or safety. In this regard, the Division does not have to establish that the disclosure of information would actually cause harm or injury, instead, it need only indicate that the possibility of harm or injury to others exists. See Matter of Nalo v. Sullivan, 125 A.D.2d 311, 312 (2d Dept. 1986), leave denied, 69 N.Y.2d 612 (1987); Stronza v. Hoke, 148 A.D.2d 900, 901 (3d Dept), leave denied, 74 N.Y.2d 611 (1989); Ruberti, Girvin and Ferlazzo v. N.Y.S. Division of State Police, 218 A.D.2d 494 (3d Dept. 1996);
- (b) a letter from the Buffalo Urban League to petitioner dated July 30, 2012; a copy is annexed hereto as Exhibit A;
- (c) a letter from Mr. Mark Saben dated March 13, 2010 that was copied to the petitioner; a copy is annexed hereto as Exhibit B;
- (d) a letter of Cheryl L. Kates, PC, counsel to petitioner, dated July 11, 2012 with an attachment; a copy is annexed as Exhibit C;
- (e) a letter from Cheryl L. Kates, PC, counsel to petitioner, received at the Attica Correctional Facility on August 3, 2012 with an attachment; a copy is annexed as Exhibit D;

- (f) a letter to former Parole Board Chairwoman Andrea Evans dated June 3, 2010 from an individual expressing support for the petitioner being granted parole. The petitioner was not copied on this letter nor is there a request therein by the author that the petitioner be provided with a copy of the same. Annexed hereto as Exhibit E is a copy of the letter with the name and address of the author being redacted. The name and address of the author are exempt from disclosure pursuant to Public Officers Law §87(2)(a). See Executive Law §259-i(2)(c)(B);
- (g) a letter to Terrence Tracy from an individual dated May 10, 2011 expressing support for the petitioner being granted parole. The petitioner was not copied on this letter nor is there a request therein by the author that the petitioner be provided with a copy of the same. Annexed hereto as Exhibit F is a copy of the letter with the name and address of the author being redacted. The name and address of the author are exempt from disclosure pursuant to Public Officers Law §87(2)(a). See Executive Law §259-i(2)(c)(B);
- (h) a letter to Terrence Tracy from an individual dated May 5, 2011 expressing support for the petitioner being granted parole. The petitioner was not copied on this letter nor is there a request therein by the author that the petitioner be provided with a copy of the same. Annexed hereto as Exhibit G is a copy of the letter with the name and address of the author being redacted. The name and address of the author are exempt from disclosure pursuant to Public Officers Law §87(2)(a). See Executive Law §259-i(2)(c)(B);
- (i) Memorandum in Support of Release received on June 16, 2010 from Robert J. Boyle, Elizabeth M. Fink and Sarah Kunstler, appearing as counsel for petitioner; a copy is annexed as Exhibit H. Redactions have been made to many of the exhibits annexed consistent with the redactions described in ¶¶ (g), (h) and (i) *supra.*;
- (j) Parole Plan for Anthony Bottom dated June 15, 2012 submitted by Cheryl L. Kates as counsel for petitioner, a copy is annexed as Exhibit I. Redactions have been made to many of the exhibits annexed consistent with the redactions described in ¶¶ (g), (h), (i) and (j) *supra.*;
- (k) numerous letters submitted from individuals regarding the petitioner being granted parole., copies are annexed as Exhibit J. Redactions have been made to a majority of the documents annexed as part of this exhibit consistent with the redactions described in ¶¶ (g), (h), (i), (j) and (k) *supra.* These letters were received at the Parole Board's office in Albany, New York and forwarded to the facility where the petitioner was located so that they could be made part of his case record and made available to the Parole Board when it considers him for the possible release to parole. My office has been advised by

