

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of the Application of
ANTHONY BOTTOM a/k/a
JALIL MUNTAQIM,

Petitioner,

ANSWER

vs.

Index No. 21,314-13

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

Respondent.

Respondent, by his attorney, answers the petition as follows:

1. Admits the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 7.
2. Denies the allegations of paragraphs 8, 9, 10 and 11.
3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.
4. Denies every allegation not admitted, denied or otherwise responded to above.

RETURN

5. Annexed hereto as Exhibits A through F are true copies of documents maintained by the New York State Department of Correctional Services.

AS TO THE PETITION'S
CLAIMS, RESPONDENT ALLEGES:

6. There is no merit to the petition's claim that the respondent is improperly withholding the documents requested by the petitioner under the Freedom of Information Law (hereinafter "FOIL").

7. New York State Executive Law 259-k(2) authorizes the Board of Parole to make rules for the purpose of maintaining confidentiality of official records and information used by the Parole Board.

8. Also, per Executive Law 259-i(2)(c)(B), items submitted to the Parole Board concerning possible release of an inmate are deemed to be confidential.

9. Per the statute, the Parole Board has enacted 9 NYCRR §8000.5(c)(2)(i)(a)-subdivisions (1), (2) and (3).

10. This regulation spells out reasons why the letters in issue are not allowed to be released to inmates and their attorneys.

11. These include provisions to permit the Parole Board to have receipt of relevant information from other law enforcement agencies, to permit private citizens to express freely their opinions for or against an inmate's possible parole release, and to permit a candid process of analysis and evaluation.

12. The regulation also prohibits a release of a document

that was obtained by a promise of confidentiality.

13. Accordingly, per Public Officers Law §87(2)(b) they are exempt from disclosure on the grounds on confidentiality, invasion of privacy, and the possibility they could endanger the life and safety of a person-even if redacted. See Zarvela v New York State Division of Parole, 252 AD2d 714, 675 NYS2d 917 (3d Dept 1998); Collins v New York State Division of Parole, 251 AD2d 738, 674 AD2d 145 (3d Dept 1998), lv den, 92 NY2d 811, 680 NYS2d 457; Robles v Tracy, 275 AD2d 837, 713 NYS2d 777 (3d Dept 2000); Carty v New York State Division of Parole, 277 AD2d 633, 716 NYS2d 125, 126 (3d Dept 2000).

14. Furthermore, the petitioner should be denied access to any material or information provided to the Board of Parole by crime victims regarding an inmate's possible release to parole supervision, (N.Y. Criminal Procedure Law §440.50[1]; NY Executive Law §259-i[2][c][B]; 9 NYCRR §8002.4[e]; NY Public Officers Law §87[2][a]).

15. In addition, any documents submitted to the Parole Board 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 NYCRR §8000.5(c)(2)(i)(a)(3).

16. To disclose the contents of these letters might subject the authors thereof to harm or endanger their families' or staffs'

life or safety.

17. In this vein, the Parole Board 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 AD2d 311, 312, leave denied, 69 NY2d 612; Stronza v. Hoke, 148 AD2d 900, 901; Ruberti, Girvin and Ferlazzo v. NYS Division of State Police, 218 AD2d 494.

18. Based upon the foregoing, the petition should be denied.

WHEREFORE, respondents respectfully request that the petition herein be denied or dismissed.

Dated: Buffalo, New York
March 7, 2013

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