

STATE OF NEW YORK
SUPREME COURT: COUNTY OF WYOMING

In the Matter of an
Article 78 Proceeding

ANTHONY BOTTOM a/k/a
JALIL MUNTAQIM

Petitioner,

Index No. 21314-13

Order to Show Cause

-against-

BRIAN FISCHER, COMMISSIONER,
DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION,

Respondents.



Upon the annexed Petition of Anthony Bottom verified on the 17th day of January, 2013 and the exhibits attached thereto,

Let Respondents show cause before the Court why judgment should not be entered in favor of Petitioner annulling the determinations of the Respondents denying Petitioner access to and copies of certain public records requested by Petitioner pursuant to the Freedom of Information Law (FOIL), for reasonable litigation costs and attorney's fees, and for such other and further relief as to the Court seems just and proper.

Let personal service of a copy of this Order to Show Cause, together with a copy of the papers upon which it was granted, upon Office of the New York State Attorney General, Main Place Tower, 350 Main Street, Suite 300A, Buffalo, NY 14202, on or before the 7th day of February, 2013 be deemed good and sufficient.

A handwritten signature in black ink, appearing to be "A-J. S.C.", written over a horizontal line. The signature is cursive and somewhat stylized.

A-J. S.C.

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ANTHONY BOTTOM a/k/a
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Petition

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BRIAN FISCHER, COMMISSIONER,
DEPARTMENT OF CORRECTIONS AND
COMMUNITY SUPERVISION (DOCCS)

Respondents.

Petitioner, by his attorney, Michael Kuzma, pursuant to CPLR Article 78 and the Freedom of Information Law, New York Public Officers Law, Article Six ("FOIL") alleges:

1. By letter dated May 30, 2012, addressed to the State of New York, Department of Corrections and Community Supervision (DOCCS), Petitioner made a request for records pursuant to FOIL. See Exhibit A.

2. By letter dated June 12, 2012, Mr. Patrick Lawlor, Counsel's Office, FOIL Unit, State of New York, DOCCS, Board of Parole, acknowledged receipt of Petitioner's FOIL request. See Exhibit B.

3. By letter dated July 16, 2012, Petitioner's FOIL request was denied in its entirety by Mr. Lawlor. See Exhibit C.

4. By letter dated July 20, 2012, Petitioner filed an administrative appeal with Mr. Terrence X. Tracy, Counsel, Board of Parole. See Exhibit D.

5. By letter dated July 27, 2012, Mr. Lawlor acknowledged receipt of Petitioner's administrative appeal. See Exhibit E.

6. By letter dated October 25, 2012, Mr. Terrence X. Tracy, Counsel, State of New York, DOCCS, denied Petitioner's administrative appeal on the grounds that the sought-after documents were exempt from disclosure pursuant to Public Officer's Law §87 (2) (a), §87 (2) (f) and §87 (2) (g). See Exhibit F.

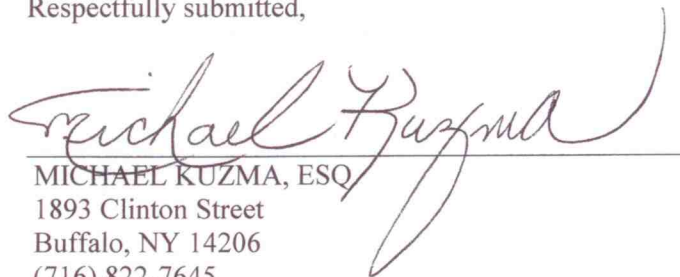
7. Petitioner has exhausted the applicable administrative remedies with respect to his FOIL request.
8. Petitioner has a right of prompt access to the requested records and Respondents have wrongfully withheld the sought-after documents from Petitioner.
9. The requested information does not fall within the narrow exemptions provided by FOIL.
10. Upon information and belief, Petitioner is entitled to reasonable attorney's fees and other litigation costs reasonably incurred in prosecuting this special proceeding.
11. Petitioner has no adequate remedy at law.
12. Petitioner has not made any previous application to this Court for similar relief.

Wherefore, Petitioner prays that this Court:

1. order Respondents to disclose the requested records in their entireties and make copies available to Petitioner;
2. provide for expeditious proceedings in this action;
3. award Petitioner reasonable attorney's fees and other litigation costs reasonably incurred in this action; and
4. grant such other relief as the Court may deem just and proper.

Dated: January 17, 2013

Respectfully submitted,


MICHAEL KUZMA, ESQ.
1893 Clinton Street
Buffalo, NY 14206
(716) 822-7645

To: Michael J. Russo
Assistant Attorney General in Charge
Office of the New York State Attorney General
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202

State of New York)
County of Wyoming)

I, Anthony Bottom, am the Petitioner in the above entitled action. I have read the foregoing petition and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



ANTHONY BOTTOM

Subscribed and sworn to before
me this 17th day of January 2013.



NOTARY PUBLIC

MICHAEL KUZMA, ESQ.
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires August 16, 2013

