

At a term of Supreme Court held in and for the County of Wyoming, at the Courthouse in Warsaw, New York, on December 23, 2013.

PRESENT: **HONORABLE MARK H. DADD**
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

In the Matter of the Application of
ANTHONY BOTTOM,
a/k/a **JALIL MUNTAQIM, #77-A-4283, Petitioner**

v.

Index No. 21,314-13

BRIAN FISCHER, Commissioner, NYS Department
of Corrections and Community Supervision, Respondent

For the Petitioner
Michael Kuzma, Esq.
1893 Clinton Street
Buffalo, New York 14206

For the Respondent
ERIC T. SCHNEIDERMAN, Attorney General
by Timothy J. Flynn
Assistant Attorney General
Main Place Tower, Suite 300A
350 Main Street
Buffalo, New York 14202

STATE OF NEW YORK
Wyoming County Clerk's Office ss.

I, Rhonda Pierce, Clerk of the County, of the County Court of said County, and the Supreme Court, both Courts being courts of Record having a common seal, do hereby certify that I have compared the annexed copy of Judgement with the original entered. DEC 26 2013 in this office and that the same is a correct transcript thereof and of the whole of said original in Testimony whereof, I have hereunto set my hand and affixed the Seal of said County and Courts, at Warsaw, N.Y. DEC 26 2013

Rhonda Pierce, Clerk

MEMORANDUM AND JUDGMENT

By petition pursuant to Article 78 of the CPLR verified on January 17, 2013, Anthony Bottom sought review of the respondent's response to his request for access to records under the Freedom of Information Law [hereinafter "FOIL"] (Public Officers Law, Article 6). Respondent requested that the petition be denied or dismissed upon the answer of Timothy J. Flynn, Assistant Attorney General, dated March 7, 2013. In response to the

answer, petitioner's attorney submitted a reply affidavit sworn to on March 14, 2013.

The Court, in an Order dated May 2, 2013, directed respondent to particularize and document its bases for claiming that certain materials covered by the petitioner's FOIL request were exempt from disclosure. In response to the Court's Order, Terrence X. Tracy, Esq., Counsel for then Department of Corrections and Community Supervision and the Board of Parole, has provided to the Court and to petitioner's counsel an affirmation dated October 22, 2013. Citing Public Officers Law §§87(2)(f) and (g) and 9 NYCRR §8000.5(c)(2)(i)(a)(3), Mr. Tracy identifies and claims an exemption from disclosure for a letter dated May 16, 2012, to the Parole Board from the Office of the District Attorney for New York County (see Tracy Affirmation, paragraph "a"). Mr. Tracy also identifies a number of documents and letters in the petitioner's parole file responsive to the FOIL request, and with respect to these records, he claims only that, for some of them, the respondent has the right pursuant to Public Officers Law §87(2)(a) and Executive Law §259-i(2)(c)(B) to redact the personal information contained within them (Tracy Affirmation, paragraphs "f" through "k").

With his affirmation, Mr. Tracy has provided to the Court and petitioner's counsel 408 pages of redacted records falling within the categories identified in paragraphs "b" through "k" of his affirmation. He further states that the records in the petitioner's parole file falling under category "k" include "approximately 627 pieces of correspondence reflecting support for or against [the petitioner] being granted parole." Redacted copies of a small fraction of these 627 pieces of correspondence are included in the 408 pages provided (Tracy Affirmation, Exhibit J). Mr. Tracy states in his affirmation that redacted copies of the remainder of the 627 pieces of correspondence identified in paragraph "k" shall be made available to the petitioner or his counsel upon request for copying or inspection at the correctional facility where the petitioner is situated.

In his reply affidavit to the Tracy affirmation, petitioner's counsel challenges the respondent's claimed exemption from disclosure for the May 16, 2012, letter from the New York County District Attorney's Office. He also questions the thoroughness of the respondent's search for responsive records, and the adequacy of the description of the records given by Mr. Tracy. He urges the Court to either order that all records falling within the scope of the FOIL

request be immediately disclosed to the petitioner in full, or direct that the respondent submit all records responsive to the FOIL request to the Court for an *in camera* review. He also requests an award of attorney's fees and costs pursuant to Public Officer's Law §89(4)(c).

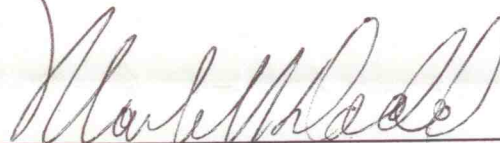
The Court finds that an *in camera* review of the records is not necessary. In his affirmation, Mr. Tracy has sufficiently identified the records and the bases for the claimed exemption and the right to redactions. The Court approves the respondent's claim of an exemption for the May 16, 2012, letter. The Court also finds that the respondent may redact the other responsive records as proposed pursuant to Public Officers Law §87(2)(a) and Executive Law §259-i(2)(c)(B). The Court declines to award attorney's fees and costs in this case.

NOW, THEREFORE, it is hereby

ORDERED that the petition is granted to the extent that, with the exception of the May 16, 2012, letter to the Division of Parole from the New York County District Attorney's Office - which is exempt from disclosure - the respondent shall provide, in accordance with this order at the petitioner's correctional facility, access for inspection and copying to redacted copies of those records responsive to the FOIL request which have not already been turned over to petitioner's counsel; and it is further

ORDERED that the petition is in other respects denied.

DATED: December 23, 2013



Acting Supreme Court Justice