

STATE OF NEW YORK
SUPREME COURT: COUNTY OF WYOMING

In the Matter of an
Article 78 Proceeding

ANTHONY BOTTOM a/k/a
JALIL MUNTAQIM

Index No. 21314-13

Reply Affidavit

Petitioner,

-against-

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

Respondents.

State of New York)
County of Erie)

I, Michael Kuzma, an attorney licensed to practice law in this state, first being duly sworn, depose and say:

1. I represent the Petitioner, Anthony Bottom a/k/a Jalil Muntaqim, and as such am fully familiar with the facts and circumstances of this case.

2. By letter dated May 30, 2012, Petitioner, sought access to *all* records maintained by DOCCS pertaining to him, including, but not limited to, any and all communications from 2009 through May 30, 2012 supporting or opposing his bid for parole. This request was denied by Respondents.

3. In his appeal letter of July 20, 2012, Petitioner specifically requested an index of the withheld documents, along with the justification for the denial of each item withheld.

4. Respondents failed to provide Petitioner with an index of the requested records thereby making it impossible for him to argue with desirable legal precision for the revelation of the concealed information.

5. Petitioner does not have any idea as to how many pages fall within the scope of his FOIL request dated May 30, 2012, nor does he know the precise nature of the withheld documents.

6. Petitioner is concerned that his continued denial of parole is predicated upon information supplied by unidentified persons in letters, emails, or other communications to the Division of Parole that Respondents now refuse to release.

7. Respondents have merely supplied this Court with conclusory statements unsupported by any factual basis as to why the sought-after records must be withheld in their entirety

8. Respondents, for example, have not indicated why personal identifiable information cannot be redacted from the requested records and the remaining non-exempt portions be released to Petitioner.

9. "The Freedom of Information Law proceeds under the premise that the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government." Matter of Fink v. Lefkowitz, 47 N.Y.2d 567, 571, 419 N.Y.S.2d 467,470.

10. "FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government." Buffalo News, Inc. v. Buffalo Enterprise Development Corporation, 84 NY 2d 488, 492, 619 N.Y.S.2d 695, 697 and In the Matter of Robert Hawley v. Village of Penn Yan, et al., 35 AD 3d 1270, 827 N.Y.S.2d 390, 391.

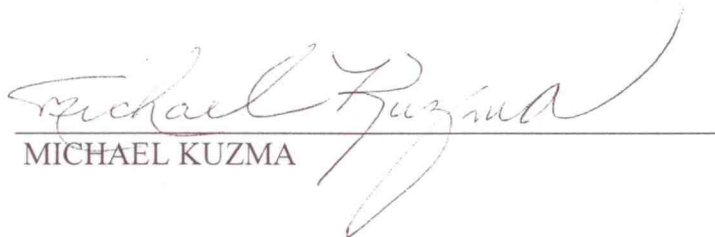
11. Allowing the Respondents to withhold the requested documents based on the bald assertion that they are exempt in their entirety without providing any explanation of the actual contents of the material withheld renders FOIL unenforceable.

12. Since Respondents have not met their burden of proof with respect to the withheld documents, this Court should conduct an *in camera* inspection in order to gauge the correctness of the Respondents' action and permit a reasoned judgment as to whether the sought-after material falls within the scope of any of FOIL exemptions.

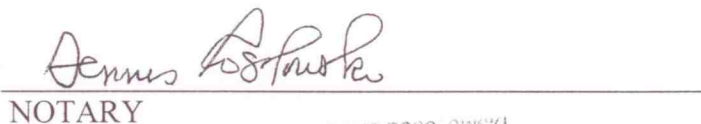
For all the foregoing reasons, this Honorable Court should conduct an *in camera* review of the requested documents to determine whether they are exempt from disclosure under FOIL in full or in part.

Dated: March 14, 2013

Respectfully submitted,


MICHAEL KUZMA

Subscribed and sworn to before me this 14th day of March 2013.


NOTARY

DENNIS ROGOLOWSKI
NOTARY PUBLIC, State of New York
Qualified in Erie County
My Commission Expires May 12, 2014

To: Mr. Timothy J. Flynn
Assistant Attorney General
Office of the New York State Attorney General
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202

STATE OF NEW YORK
SUPREME COURT: COUNTY OF WYOMING

In the Matter of an
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ANTHONY BOTTOM a/k/a
JALIL MUNTAQIM

Petitioner,

Index No. 21314-13

Affidavit of Service

-against-

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

Respondents.

State of New York)
County of Erie)

I, Michael Kuzma, an attorney licensed to practice law in this state, first being duly sworn, depose and say:

1. I am not a party to this action, I am 18 years of age or older, and I maintain offices at 1893 Clinton Street, Buffalo, New York 14206.

2. On March 14, 2013, I served a true copy of the Reply Affidavit by depositing a copy, enclosed in a first-class, postpaid wrapper, in a post office or official depository under the exclusive care and custody of the United States Postal Service within the state, addressed to the following address, which is designated by the addressee for that purpose:

Mr. Timothy J. Flynn
Assistant Attorney General
Office of the New York State Attorney General
Main Place Tower
350 Main Street, Suite 300A
Buffalo, NY 14202

