

## Matter of Bottom v Fischer

Matter of Bottom v Fischer 2015 NY Slip Op 05319 Decided on June 19, 2015, Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 19, 2015, SUPREME COURT OF THE STATE OF NEW YORK  
Appellate Division, Fourth Judicial Department

PRESENT: SCUDDER, P.J., SMITH, SCONIERS, WHALEN, AND DEJOSEPH, JJ.

547 CA 14-01994

[\*1]IN THE MATTER OF ANTHONY BOTTOM, ALSO KNOWN AS JALIL MUNTAQIM,  
PETITIONER-APPELLANT,

v

BRIAN FISCHER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF  
CORRECTIONS AND COMMUNITY SUPERVISION, RESPONDENT-RESPONDENT.

MICHAEL KUZMA, BUFFALO, FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (ALLYSON B. LEVINE  
OF COUNSEL), FOR RESPONDENT-RESPONDENT.

Appeal from a judgment of the Supreme Court, Wyoming County (Mark H. Dadd, A.J.), entered December 26, 2013, in a CPLR article 78 proceeding. The judgment, insofar as appealed from, denied the petition in part.

It is hereby ORDERED that said appeal from the judgment insofar as it exempts from disclosure the May 16, 2012 letter is unanimously dismissed as moot, and the judgment is modified on the law by granting that part of the petition seeking reasonable attorney's fees and other litigation costs reasonably incurred by the petitioner, and as modified the

judgment is affirmed with costs, and the matter is remitted to Supreme Court, Wyoming County, to determine the amount of such attorney's fees and litigation costs.

Memorandum: The petitioner commenced this proceeding seeking, inter alia, an order directing the respondent to comply with his request for documents under the Freedom of Information Law ([FOIL] Public Officers Law art 6). Respondent denied the petitioner's request and thereafter denied his administrative appeal in its entirety on the ground that the documents sought were exempt from disclosure pursuant to Public Officers Law § 87 (2) (a), (f) and (g). In a prior order, the Supreme Court directed the respondent "to provide petitioner's counsel with affidavits or other proof supporting the application of the specific exemptions for the information which was withheld." Respondent then disclosed the majority of the records requested. The court thereafter granted the petition 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, the respondent was directed to provide access for inspection and copying redacted copies of those documents responsive to the FOIL request that had not previously been disclosed to petitioner's counsel.

At the outset, we note that inasmuch as petitioner has received a copy of the May 16, 2012 letter, his appeal from that part of the judgment exempting that letter from disclosure has been rendered moot (see *Matter of Usatynski v Daines*, 86 AD3d 914, 914-915). Contrary to the petitioner's contention, we conclude that the respondent was entitled to redact from certain documents the names of organizations that "if disclosed could endanger the life or safety of any person" belonging to such organizations (Public Officers Law § 87 [2] [f]; see *Matter of Bellamy v New York City Police Dept.*, 87 AD3d 874, 875, *affd* 20 NY3d 1028, *rearg denied* 21 NY3d 974).

We agree with the petitioner, however, that the court abused its discretion in denying, without explanation, that part of his petition seeking an award of reasonable attorney's fees and other litigation costs reasonably incurred in this proceeding. The petitioner satisfied the prerequisites for such an award pursuant to Public Officers Law § 89 (4) (c). Inasmuch as the respondent ultimately provided all but one of the documents in the FOIL request, the petitioner "substantially prevailed" within the meaning of the statute (§ 89 [4] [c]; see *Matter of New York State [\*2]Defenders Assn. v New York State Police*, 87 AD3d 193, 195-196; *Matter of New York Civ. Liberties Union v City of Saratoga Springs*, 87 AD3d 336, 338). Further, respondent had no reasonable basis for its blanket denial of petitioner's request (see § 89 [4] [c] [i]). Indeed, the respondent's contention that it had a reasonable basis for denying access to all of the requested documents is belied by its release of the majority of those documents when the court directed it to justify their nondisclosure (see *New York State Defenders Assn.*, 87 AD3d at 197). We conclude, therefore, that petitioner "has been subjected to the very kinds of

unreasonable delays and denials of access' which the counsel fee provision seeks to deter" (Matter of Legal Aid Socy. v New York State Dept. of Corr. & Community Supervision, 105 AD3d 1120, 1122). Thus, we modify the judgment by granting that part of the petition seeking an award of reasonable attorney's fees and other litigation costs reasonably incurred by the petitioner, and we remit the matter to Supreme Court to determine the amount thereof.