

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D27062  
C/kmg

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Submitted - April 7, 2010

STEVEN W. FISHER, J.P.  
JOSEPH COVELLO  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2009-01049

DECISION & ORDER

In the Matter of Detroy Livingston, appellant,  
v Charles J. Hynes, etc., respondent.

(Index No. 18210/08)

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Detroy Livingston, Alden, N.Y., appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Morgan J. Dennehy of counsel), respondent pro se.

In a proceeding pursuant to CPLR article 78 to review a determination of Charles J. Hynes, the Kings County District Attorney, dated March 6, 2008, which denied the petitioner's request for disclosure pursuant to the Freedom of Information Law (Public Officers Law § 84 *et seq.*), the petitioner appeals from a judgment of the Supreme Court, Kings County (Starkey, J.), dated August 21, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

The respondent satisfied his obligation under the Freedom of Information Law when he certified that after a diligent search, no documents responsive to the petitioner's request were in his possession (*see* Public Officers Law § 89[3]; *Matter of Curry v Nassau County Sheriff's Dept.*, 69 AD3d 622; *Matter of Covington v Sultana*, 59 AD3d 163, 164; *Matter of Robert v LoCicero*, 28 AD3d 566, 567; *Matter of Rodriguez v Dillon*, 210 AD2d 416, 417). Furthermore, the petitioner's offer of proof failed to establish that the requested documents, if any, were in the respondent's possession (*see Matter of Curry v Nassau County Sheriff's Dept.*, 69 AD3d 622; *Matter of Daum v*

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*Tessler*, 24 AD3d 214, 215; *Matter of Calvin K. of Oakknoll v De Francesco*, 200 AD2d 619; *Matter of Ahlers v Dillon*, 143 AD2d 225, 226). Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

FISHER, J.P., COVELLO, BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court