

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 11-02045

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND MARTOCHE, JJ.

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IN THE MATTER OF MARTIN J. SAWMA,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

CHRIS COLLINS, COUNTY EXECUTIVE, COUNTY OF  
ERIE, RESPONDENT-RESPONDENT.

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LAW OFFICE OF MICHAEL KUZMA, BUFFALO (MICHAEL KUZMA OF COUNSEL), FOR  
PETITIONER-APPELLANT.

LIPPES MATHIAS WEXLER FRIEDMAN LLP, BUFFALO (VINCENT M. MIRANDA OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated decision and order) of the Supreme Court, Erie County (Timothy J. Walker, A.J.), entered December 8, 2010 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner appeals from a judgment dismissing his CPLR article 78 petition that sought disclosure of certain records of respondent pursuant to the Freedom of Information Law ([FOIL] Public Officers Law art 6). We agree with Supreme Court that the documents sought are exempt from disclosure pursuant to Public Officers Law § 87 (2) (g) inasmuch as they are inter-agency or intra-agency materials that are not statistical or factual tabulations or data, instructions to staff that affect the public, or final agency policy or determinations. Respondent met his burden of establishing that the documents were part of a government decision-making process that involved the use of consultation, and such predecisional material that an agency decision-maker uses to arrive at a decision is exempt from FOIL disclosure (*see Matter of Xerox Corp. v Town of Webster*, 65 NY2d 131; *Matter of Bass Pro, Inc. v Megna*, 69 AD3d 1040). In light of our determination, we need not address the remaining exemptions under FOIL upon which respondent relies.

Entered: March 16, 2012

Frances E. Cafarell  
Clerk of the Court