UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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GEORGE R. SIMPSON,

Plaintiff.

-against-

DECLARATION IN SUPPORT OF DISMISSAL

TOWN OF SOUTHAMPTON and
PATRICK A. HEANEY, individually and
in his official capacity,
NANCY GRABOSKI, individually and
in her official capacity,
LINDA A. KABOT, individually and
in her official capacity,
STEVEN KENNY, individually and
in his official capacity,
CHRISTOPHER R. NUZZI, individually and
in his official capacity,
GARRETT SWENSON, JR., individually and
in his official capacity,
JOSEPH M. BURKE, individually and
in his official capacity,
NOREEN MCCULLEY, individually and
in her official capacity,
SUNDY A. SCHERMEYER, individually and
in her official capacity,
PAULA POBAT, individually and
in her official capacity,
RICHARD BLOWES, individually and
in her official capacity,

CV-06 6743

(Bianco,J.)

Defendants.
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Jeltje deJong, an attorney duly admitted to practice law before the Courts of the State of New York, and specifically the United States District Court of the Eastern District of New York, declares the following under penalty of perjury:

1. I am a partner with the firm of Devitt Spellman Barrett, LLP, attorneys for the defendants. I submit this declaration in reply to plaintiff's response to defendants' motion to dismiss pursuant to Rules 12(b)(1) and 12 (b)(6) of the Federal Rules of Civil Procedure.

2. Plaintiff claims that he has set forth many claims which are different and distinct from the claims covered by the New York State Freedom of Information Law provisions (hereinafter "FOIL").

3. A review of plaintiff's responsive papers, show that his claims, in fact, concern his rights under FOIL and defendants' responsibilities under FOIL.

4. All of plaintiff's claims stem from his requests for information pursuant to FOIL, and the responses thereto by the defendants pursuant to the applicable FOIL provisions. Even plaintiff's defamation claim which arises under state law, stems from the denials of his FOIL requests.

5. It is well settled that this Court does not have jurisdiction to determine whether the defendants' violated plaintiff's right to access to records, because the appropriate vehicle is a state court proceeding pursuant to New York CPLR Article 78, after the plaintiff exhausts his

administrative remedies. Please see, the accompanying reply memorandum of law.

6. Furthermore, plaintiff has failed to state a violation of his constitutional rights.

7. As demonstrated in the accompanying memorandum of law, FOIL requires that the plaintiff as an aggrieved party utilize the statutorily prescribed legal procedure of an Article 78 Proceeding. Plaintiff has not pursued this remedy.

WHEREFORE, it is respectfully requested that this Court dismiss the plaintiff's complaint in its entirety.

Dated: Smithtown, New York
April 4, 2007

_____/S/_____
JELTJE DEJONG(JD/4452)