



The State University  
of New York

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353 Broadway, Albany, New York 12246

[www.suny.edu](http://www.suny.edu)

May 27, 2022

Cameron Macdonald  
Government Justice Center, Inc.  
30 South Pearl St., Suite 1210  
Albany, NY 12207

VIA CERTIFIED MAIL: 70001670000886675261

Re: Freedom of Information Law Appeal – The State University of New York  
System Administration (“SUNY”)

Dear Mr. Macdonald:

I write in response to your appeal dated May 12, 2022, from the denial of your Freedom of Information Law (“FOIL”) request (the “Request”) dated February 10, 2022, seeking the following records:

1. The retention agreement or engagement agreement with any law firm employed by the SUNY Trustees relating to the resignation and separation of Dr. James Malatras from his chancellor position with the State University of New York.
2. Any invoices for services received from any law firm employed by the SUNY Trustees relating to the resignation and separation of Dr. James Malatras from his chancellor position with the State University of New York.
3. Any records reflecting claims asserted by Malatras against SUNY that may be subject to the General Release and Covenant Not To Sue Malatras signed on January 16, 2022.
4. Any records, including but not limited to minutes, transcripts, or recordings reflecting the SUNY Board of Trustees discussions or deliberations regarding the Separation Agreement and General Release between SUNY and Malatras dated January 16, 2022.

Cameron Macdonald

May 27, 2022

Page 2

The Records Access Officer ("RAO") acknowledged your request and stated that due to ongoing COVID-related staffing shortages, she anticipated responding to your request within 30 business days, or by April 1, 2022. On March 31, 2022, the RAO emailed a revised response date of April 28, 2022, but on April 13<sup>th</sup>, she issued a decision stating that no responsive records could be found following a diligent search.

On appeal, you stated that the RAO's response is inconsistent with a public statement made by a SUNY spokesperson, which you quoted, without citation, as follows:

After a thorough review by outside counsel, the SUNY Board of Trustees have resolved and fulfilled its contractual obligations to former Chancellor Dr. Jim Malatras. Consistent with his initial contract, Dr. Malatras will be provided a one-year study leave followed by a tenured faculty position at Empire State College. We believe this resolution is fair and equitable.

With respect to the RAO's response, Public Officers Law § 89(3) requires an agency to certify that records cannot be found after diligent search. There is no prescribed format for the certification. "Neither a detailed description of the search nor a personal statement from the person who actually conducted the search is required." *Matter of Rattley v. NYC Police Dep't*, 96 N.Y.2d 873, 875 (NY 2001). Here, the RAO stated, "no responsive records can be found following a diligent search." I find that certification sufficient under the law.

#### Request Nos. 1 and 2

No retention agreement, engagement agreement or other contract between a law firm and the SUNY Board of Trustees, or any invoices for law firm services relating to the separation of former Chancellor James Malatras existed in SUNY files as of the date of the RAO's decision. Accordingly, the RAO's decision accurately stated that no responsive records existed.

The Public Officers Law contains no provision for continuing search and production of records in the manner of the Civil Practice Law & Rules for civil litigation and the scope of the FOIL appeals process is limited to the underlying FOIL request and decision. Notwithstanding the foregoing, a current search was conducted in connection with this FOIL Appeal and no responsive records exist. This does not preclude a new FOIL request at a later interval.

Accordingly, I affirm the RAO's decision on Nos. 1 and 2 of the Request.

Cameron Macdonald  
May 27, 2022  
Page 3

Request No. 3

Upon my investigation, I determined that there are no responsive records reflecting any "claims asserted by Malatras against SUNY. . . ." That said, the General Release and Covenant Not To Sue (referred to in your FOIL appeal) and the letter appointing the Chancellor might be considered records that could underlie or relate to any such claims. I therefore direct the RAO to provide you with these two records immediately following the RAO's receipt of this FOIL Appeal decision.

Request No. 4

Upon my investigation of this matter, I determined that despite an indication in the quotation you provided – that that the SUNY Board of Trustees issued a resolution with respect to this matter – no such resolution exists. This is confirmed and documented by the SUNY Board of Trustees archived meeting page at the following link, which provides detailed meeting information including copies of all resolutions passed.

<https://www.suny.edu/about/leadership/board-of-trustees/meetings/meetingNotices.cfm?archivedPage=Y>

A resolution of the Board of Trustees could only derive from a noticed meeting, and similarly, there are no meeting notices, agendas or minutes. Accordingly, I affirm the RAO's denial of this request on the ground that no responsive records exist.

This appeal is closed.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Frank".

Jamie Frank  
FOIL Appeals Officer

cc: Ivy Poitras  
New York Committee on Open Government