

PRESENT: HON. THOMAS J. McNAMARA  
Acting Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of  
DOMINICK J. SIANI,  
Petitioner,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law & Rules

-against-

THE RESEARCH FOUNDATION OF THE STATE  
UNIVERSITY OF NEW YORK; JOHN R. RYAN, Chair;  
JOHN J. O'CONNOR, President; TIMOTHY P. MURPHY,  
Executive Vice President and Chief Operating Officer,

Respondents.

**JUDGMENT**

Index No.: 6976-06

RJI No.: 01-06 087266

(Supreme Court, Albany County, Article 78 Term)

APPEARANCES: Dominick J. Siani,  
*Petitioner, Pro Se*  
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McNamara, J.

In September 2006, petitioner sent a letter to the Research Foundation of the State University of New York (Research Foundation) requesting, pursuant to Public Officers Law article 6, the Freedom of Information Law (FOIL), certain records maintained by the Research Foundation. Later

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that month, petitioner received a response advising him that the Research Foundation was a private, non-profit corporation and therefore, not subject to FOIL. Nonetheless, the Research Foundation provided some information responsive to the request. In October 2006, petitioner instituted this CPLR article 78 proceeding challenging the determination by the Research Foundation that it was not subject to FOIL. Petitioner served a second FOIL request on the Research Foundation in November 27, 2006 and in December 2006 the Research Foundation sent its response as well as a separate supplemental response to the September application. In both responses, the Research Foundation continued to maintain that it was not subject to FOIL but nonetheless, waived their right to raise the objection and provided material responsive to each application. In a third request dated December 23, 2006, petitioner requested additional information based on the response to the November 2006 application. In response, the Research Foundation certified that a more diligent search for certain material had been made and no responsive documents were found, clarified another matter regarding a charge back and provided an HR memorandum from which some matter was redacted. The Research Foundation asserted that the material had been redacted because it was not responsive to the application. Petitioner later requested that an unredacted copy of the memorandum be provided and that he be provided with a certification pursuant to Public Officers Law §89(3) concerning documents having to do with payments made to the President of the SUNY Maritime College.

In January 2007, petitioner amended the petition to include the Research Foundation's response to the document request from November 2006 including the redacted HR memorandum.

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The Research Foundation served an answer in which it asserts that it is not subject to FOIL and now contends that the proceeding is moot because it has provided all of the information petitioner requested. The contention that all the material requested has been provided is supported by an affidavit of Timothy Jennings, the Assistant Vice President of Internal Controls for the Research Foundation, in which he outlines the effort made, under his supervision, to locate and produce responsive material and in which he certifies that the Research Foundation has produced all responsive documents. The affidavit and respondent's other submissions, do not address the question of whether it properly redacted material from the HR memorandum. However, that issue need only be addressed if the Research Foundation is subject to the provision of the Freedom of Information Law.

Under the Freedom of Information Law, each agency of a public corporation is required to make all records available for public inspection and copying except those which fall within one of the enumerated exceptions (Public Officers Law §87[2]). An "agency" is defined as "any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature." (Public Officers Law §86[3]). Determining whether an entity is performing a governmental function requires that the court look at "the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional

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relationship to affected parties and constituencies" (see, *Matter of Perez v. City Univ. of New York*, 5 NY3d 522, 528 [2005], quoting, *Matter of Smith v City Univ. of New York*, 92 NY2d 707[1999], public body under Open Meetings Law ).

The Research Foundation was chartered in 1951 by the New York State Board of Regents as a non-profit educational corporation and is comprised of a central office and operating units at 30 campus locations around the State. The powers and duties of the Research Foundation as found in its charter are to assist in developing and increasing facilities of the State University of New York by making and encouraging gifts, grants and donations of real and personal property, to receive, hold and administer gifts and grants and to finance studies and research of benefit to and in keeping with the educational purposes and objectives of the State University. The relationship between the State University and the Research Foundation is set out in a 1977 agreement between those entities. The agreement defines the major function of the Research Foundation as serving as the fiscal administrator of funds awarded by the federal government and other authorized sources for the conduct of sponsored programs at the State-operated institutions of the University. Under the agreement, all applications to prospective sponsors by faculty or staff members at the State-operated institutions of the University seeking support for sponsored programs are to be made by the University through the Research Foundation. All such applications made by the Research Foundation require prior written approval of the chief administrative office of the college or other institutions of the University where the sponsored program is to be conducted and the prior written approval of the Chancellor or his designee. The Chancellor is the chair, ex officio, of the Board of

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the Research Foundation.

As the fiscal administrator of the majority of the State University's sponsored programs, the activity of the Research Foundation is included in the financial statements of the State University. In addition, the Research Foundation is included within the definition of a "state agency" in State Finance Law §53-a.

Given the functional relationship between the Research Foundation and the State University, the importance of the role played by the Research Foundation in the educational efforts of the State University and the power it has with respect to sponsored programs of the State University, the Research Foundation exercises a governmental function and is therefore, subject to the provisions of the Freedom of Information Law.

The remaining issue is whether the Research Foundation properly redacted material from the HR memorandum it provided to petitioner. An agency is permitted to redact information from material prior to release in situations where the redacted material is covered by an exemption in the statute (see e.g. *Matter of Century House Historical Society v NYS Public Service Commission*, 237 AD2d 844 [1997]; *Matter of Lyon v Dunne*, 180 AD2d 922 [1992]). However, considering that the records of an agency are presumptively open to public inspection and copying (*Matter of Ervin v Southern Tier Economic Dev., Inc.*, 26 AD3d 633 [2006]), an agency may not redact non-exempt information from a document that is open to inspection and is otherwise subject to inspection under FOIL.

Based on the foregoing, petitioner is awarded judgment directing the Research Foundation

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of the State University of New York to comply with the provisions of Public Officers Law article 6 and provide an unredacted copy of the HR memorandum dated March 30, 2005.

All papers, including this Judgment, are being returned to petitioner. The signing of this Judgment shall not constitute entry or filing under CPLR 2220. The parties are not relieved from the applicable provisions of that section with respect to filing, entry and notice of entry.

SO ORDERED.

ENTER.

Dated: Saratoga Springs, New York  
March 26, 2007



Thomas J. McNamara  
Acting Supreme Court Justice

Papers Considered:

- 1) Notice of Petition dated October 11, 2006;
- 2) Petition dated October 11, 2006 verified by Dominick J. Siani on October 11, 2006;
- 3) Answer dated January 8, 2007 verified by Timothy J. Jennings on January 8, 2007;
- 4) Amended Petition dated January 16, 2007 verified by Dominick J. Siani on January 16, 2006 with exhibits annexed;
- 5) Affidavit of Timothy J. Jennings sworn to January 8, 2007 with exhibits annexed.