

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

1019

CA 25-00021

PRESENT: LINDLEY, J.P., CURRAN, NOWAK, AND HANNAH, JJ.

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IN THE MATTER OF PETER W. LOEHR, PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

DR. BONITA DURAND, INTERIM PRESIDENT AND  
CEO OF BUFFALO STATE UNIVERSITY, RESPONDENT-RESPONDENT.

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PETER W. LOEHR, PETITIONER-APPELLANT PRO SE.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (BEEZLY J. KIERNAN OF  
COUNSEL), FOR RESPONDENT-RESPONDENT.

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Appeal from a judgment (denominated order and judgment) of the Supreme Court, Erie County (Catherine R. Nugent Panepinto, J.), entered June 5, 2024, in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition and amendments.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to compel respondent to provide certain documents sought pursuant to the Freedom of Information Law ([FOIL] Public Officers Law art 6). Petitioner appeals from a judgment that dismissed the petition and amendments. Contrary to petitioner's contention, Supreme Court properly granted respondent's motion to dismiss the petition for failing to name a necessary party.

A party whose interest may be adversely affected by a potential judgment must be made a party in a CPLR article 78 proceeding (see CPLR 1001 [a]; *Matter of Martin v Ronan*, 47 NY2d 486, 490 [1979]; *Matter of Spence v Cahill*, 300 AD2d 992, 992-993 [4th Dept 2002], *lv denied* 1 NY3d 508 [2004]). Here, we conclude that the State University of New York (SUNY) FOIL Appeals Office is a necessary party inasmuch as it made the final determinations as to petitioner's FOIL requests (see generally *Matter of A&F Scaccia Realty Corp. v New York City Dept. of Env'tl. Protection*, 200 AD3d 875, 877 [1st Dept 2021]; *Matter of McNeill v Town Bd. of Town of Ithaca*, 260 AD2d 829, 830 [3d Dept 1999], *lv denied* 93 NY2d 812 [1999]) and that respondent is not a proper party because she did not render the final determinations as to petitioner's FOIL requests (see *Matter of La Russo v Neuringer*, 105 AD3d 743, 744 [2d Dept 2013]; see also *Matter of Schulz v Town of Hopewell Zoning Bd. of Appeals*, 163 AD3d 1477, 1478 [4th Dept 2018]). In light of petitioner's failure to include a necessary party, the

petition was properly dismissed (see *Spence*, 300 AD2d at 992-993; *McNeill*, 260 AD2d at 829). Finally, we deny petitioner's request to add the necessary party or parties inasmuch as the statute of limitations has expired (see generally *Matter of Lodge v D'Aliso*, 2 AD3d 525, 526 [2d Dept 2003], lv denied 2 NY3d 702 [2004]).

Entered: March 20, 2026

Ann Dillon Flynn  
Clerk of the Court