

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure the Plaintiff James Tracy, through his attorneys requests that the Defendant FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES, a/k/a FLORIDA ATLANTIC UNIVERSITY, produce the documents, electronically stored information, and other tangible things described herein, in your actual or constructive possession, custody, or control, for inspection and copying by the Plaintiff's attorneys.

## DEFINITIONS

1. Action. "Action" is defined as the fact or process of doing something, typically to achieve an aim.
2. All/Each. The terms "all" and "each" shall be construed as all and each.
3. And/Or. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary, in order to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
5. Any. The term "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."

6. Communication. The term “communication,” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise).
7. Complaint/complaint. The term “Complaint” means the Plaintiffs’ Complaint and any future amendments thereof. The term “complaint” means protestation, objection and/or the expression of dissatisfaction.
8. Concerning. The term “concerning” means relating to, referring to, describing, evidencing, constituting, pertaining to, or in relation to.
9. Defendants. The term “Defendants” means any and all Defendants named in the Complaint.
10. Document. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term. Included in this definition are: e-mail, communications, contracts, correspondence, books, records, reports, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, releases, studies, blueprints, questionnaires, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, motion pictures, and data cards, as well as any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, on which information is recorded in writing or in sound or in any other manner.
11. Electronically stored information. The terms “Electronically stored information” and “ESI” mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including but not limited to electronic mail

(sent, received, or draft), instant messaging, videoconferencing, and direct connections or other electronic correspondence (whether opened or unopened, active or deleted), word processing files, spreadsheets, databases, and sound recordings such as voicemail or recorded telephone calls, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, iPhone, smartphone, or other storage media, and such technical assistance or instructions as will transform such ESI into reasonably usable form.

12. Number. The use of the singular form of any word includes the plural and vice versa.

13. Person. The term “person,” means as any natural person or any business, legal entity, or association.

14. Relating to. The term “relating to” means concerning, evidencing, constituting, pertaining to, or in relation to.

15. Third-party. The term “third-party” means any natural person or any business, legal or governmental entity, or association that is not a named party in the Complaint.

16. University. The term “University” means Florida Atlantic University.

17. You/Your/Defendant University. The terms “you”, “your” and “Defendant University” refer to the Defendants Florida Atlantic University Board of Trustees, a/k/a Florida Atlantic University, including but not limited to its current or former officers, employees, agents, and any other party or person acting on the Defendant University’s behalf.

## **INSTRUCTIONS**

Pursuant to Fed. R. Civ. P. 34(b)(2)(A), you must respond to these Requests in writing within 30 days after being served.

A. Unless otherwise stated, the relevant time period for this Request is from the beginning of time through the date of full and complete response.

B. Where a claim of privilege is asserted in objecting to any means of discovery or disclosure, and a document is not produced on the basis of such assertion, you must nevertheless provide the following information, unless divulging such information would disclose the allegedly privileged information:

1. The nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law, indicate the state's privilege being invoked; and
2. The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:
  - (a) the type of document, *e.g.*, letter of memorandum; (b) the general subject matter of the document; (c) the date of the document; and (d) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate: the author of the document; the addresses of the document, and any other recipients shown in the document, and where not apparent, the relationship of the author, addressees, and recipients to each other.

C. If an objection is made to any request herein, the objection shall state with specificity all grounds. All documents, ESI, and other tangible things covered by the request not subject to the objection should be produced. Similarly, if an objection is made to production of an item, the portion(s) of that item not subject to objection should be produced with the portion(s) objected to redacted and indicated clearly.

D. Pursuant to Fed. R. Civ. P. 34(b)(2)(E)(i), documents shall be produced as they are kept in the usual course of business, or organized and labeled to correspond to the categories in this Request.

E. ESI shall be produced in the following formats and media types:

1. Magnetic and other electronic media types accepted:

- (a) CD-R CD-ROMs formatted to ISO 9660 specifications.
- (b) DVD-ROM for Windows-compatible personal computers.
- (c) IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible uncompressed data.

Note: Other types of tape media used for archival, backup, or other purposes such as 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes, DLT or other types of media will be accepted only with prior approval.

2. File and record formats

- (a) Email: MS Outlook PST files, MS Outlook, and MSG files. Any other electronic submission of email accepted only with prior approval.
- (b) Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned Documents must adhere to the following specifications:
  - (i) All images must be multi-page, 300 DPI – Group IV TIFF files named from the beginning bates number.
  - (ii) If the full text of the Document is available, that should be provided as well. The text should be provided in one file for the entire Document or email, named the same as the first TIFF file of the Document with a \*.TXT extension.

Note: Single-page, 300 DPI – Group IV TIFF files may be submitted with prior approval if accompanied by an acceptable load file which denotes the appropriate information to allow the loading of images into a document management system with all document breaks (document delimitation) preserved. OCR accompanying single-page TIFF submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a \*.TXT extension.

**PLAINTIFF'S THIRD REQUEST FOR PRODUCTION**  
**DIRECTED TO DEFENDANT FLORIDA ATLANTIC UNIVERSITY**

1. All documents, ESI, communications, tangible things and other records relating to the November 30, 2015 “Consultation” held at the Defendant University. The term “Consultation” is as defined by Article 2 of the 2012-2015 UFF-FAU Collective Bargaining Agreement.
2. All documents, ESI, communications, tangible things and other records relating to any and all official recognition of Plaintiff by the University, including but not limited to disciplinary action, threats of disciplinary action, admonishment, accolade, award, scholarship, grant, and any other form of recognition. “Recognition” is defined as the formal acknowledgement of something, including achievement, service, merit, appreciation, sanction, punishment, etc.
3. All documents, ESI, communications, tangible things and other records relating to the Defendant University’s methodology or procedures, if any, in connection with addressing and anticipating potential conflicts of interest or commitment on the part of Defendant University’s personnel.
4. All documents, ESI, communications, tangible things and other records relating to purported violations of the University’s “Outside Activities/Conflict of Interest” Policy by FAU personnel Kevin Wagner, Steven Kajiura, Aaron Kula, and/or James Cunningham.

5. All documents, ESI, communications, tangible things and other records relating to any instructions given to FAU personnel concerning the submission of online activities, including but not limited to Facebook, Twitter, blogging and other forms of social media activity, pursuant to the University's "Outside Activities/Conflict of Interest" Policy.
6. All documents, ESI, communications, tangible things and other records relating to the "progressive" discipline methodology used by Florida Atlantic University.
7. All documents, ESI, communications, tangible things and other records relating to the "progressive" discipline methodology used in connection with alleged violations of the University's "Outside Activities/Conflict of Interest" Policy.
8. All documents, ESI, communications, tangible things and other records relating to the "progressive" discipline methodology used in connection with allegations of "insubordination".
9. Any and all evaluations of Plaintiff by the Defendant University.
10. Plaintiff's entire FAU personnel file, in its entirety, to date.
11. All documents, ESI, communications, tangible things and other records relating to the April 19, 2016 UFF-FAU Chapter Grievance filed by UFF-FAU concerning "Article 19 Conflict of Interest / Outside Activity".
12. All documents, ESI, communications, tangible things and other records relating to the University Faculty Senate Meeting held on September 4, 2015.
13. All documents, ESI, communications, tangible things and other records relating to the training, enforcement, instruction, advisement, application, direction, monitoring, supervision, and/or explanation of Articles 5, 16, and/or 19 of the 2012-2015 UFF-FAU Collective Bargaining Agreement, if any, by the Defendant University, or any of its officers, employees, representatives and/or agents.

14. All e-mail communications transmitted, created, kept maintained (including both archived and/or deleted) on the University's email network and server, sent or received from September 1, 2015 through January 31, 2016, by Defendants John Kelly ([president@fau.edu](mailto:president@fau.edu) and/or [jkelly@fau.edu](mailto:jkelly@fau.edu) and/or Defendant Kelly's personal email address), Diane Alperin ([alperind@fau.edu](mailto:alperind@fau.edu) and/or Defendant Alperin's personal email address), Heather Coltman ([coltman@fau.edu](mailto:coltman@fau.edu) and/or Defendant Coltman's personal email address), Robert Zoeller, Jr. ([president@uff-fau.org](mailto:president@uff-fau.org) and/or [zdawg2014@yahoo.com](mailto:zdawg2014@yahoo.com)), Michael Moats ([michael.moats@floridaea.org](mailto:michael.moats@floridaea.org)); and each of the following accounts/addresses: [provost@fau.edu](mailto:provost@fau.edu), [cbeetle@fau.edu](mailto:cbeetle@fau.edu), [ufspresident@fau.edu](mailto:ufspresident@fau.edu), [glickl@fau.edu](mailto:glickl@fau.edu), [dkian@fau.edu](mailto:dkian@fau.edu), [lmetcalf@fau.edu](mailto:lmetcalf@fau.edu), [jglanzer@fau.edu](mailto:jglanzer@fau.edu), [dcwill@fau.edu](mailto:dcwill@fau.edu), [tlenz@fau.edu](mailto:tlenz@fau.edu), [crobe@fau.edu](mailto:crobe@fau.edu), [eason@fau.edu](mailto:eason@fau.edu), [sreilly@fau.edu](mailto:sreilly@fau.edu), [nmarin@fau.edu](mailto:nmarin@fau.edu), [ljohnson@fau.edu](mailto:ljohnson@fau.edu), [dmcgetch@fau.edu](mailto:dmcgetch@fau.edu), [dmcgetch@yahoo.com](mailto:dmcgetch@yahoo.com), [mbudd@fau.edu](mailto:mbudd@fau.edu), [mbudd44@gmail.com](mailto:mbudd44@gmail.com), [wtrapan1@fau.edu](mailto:wtrapan1@fau.edu); [svolnick@fau.edu](mailto:svolnick@fau.edu), [hullp@fau.edu](mailto:hullp@fau.edu), [dukate@fau.edu](mailto:dukate@fau.edu), [lelliott@fau.edu](mailto:lelliott@fau.edu), [gilbert@fau.edu](mailto:gilbert@fau.edu), [rgelin@fau.edu](mailto:rgelin@fau.edu), [alaplant@fau.edu](mailto:alaplant@fau.edu); [abarbar@barbar.com](mailto:abarbar@barbar.com); which include one or more of the following search terms: "JT"; "J.T."; "Jim"; "James"; "Tracy"; "conspiracy"; "memory hole"; "memoryhole"; "annual assignment"; "bargain"; "conflict"; "FAIR"; "dropdown"; "Newtown"; "hoax"; "Sandy Hook"; "Pozner"; "harass"; "terminat"; "discipline"; "fire"; "riddance"; "tenure"; "cancel"; "rebel"; "refus"; "belligerent"; "deliberate"; "intentional"; "nonconformist"; "comply"; "outside activity"; "conflict of interest"; "article 19"; "OA"; "COI"; "employment"; "monitor"; "commit"; "blog"; "donat"; "free speech"; "First Am"; "1st Am"; "freedom of speech"; "prior restraint"; "constitution"; "censor"; "monitor"; "chill"; "pickering"; "garcetti", "discipline"; "reprimand"; "article 5"; "5.2"; "academic freedom"; "muzzle"; "bonus"; "raise"; "donor"; and/or "paternity leave". The terms searched should not be case sensitive, or limited to "whole word"

only, for example, a search for the term "constitution" above should include the whole word and words containing that term, such as "Constitutional" or "unconstitutional". In addition, all documents, communications, notes or other records responsive to the search terms should include the entire chain or thread of communication(s) in which the term(s) are located, and all attachments thereto.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of April 2017, I electronically served by email Plaintiff's Third Request for Production of Documents and Tangible Things Directed to Defendant Florida Atlantic University Board of Trustees to all counsel and parties of record per the attached Service List below.

/s/ Louis Leo IV  
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