

KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

May 7, 2024

Transmitted by Email to [g@xny.io](mailto:g@xny.io)

Mr. Gunnar Larson  
xNY.io – Bank.org  
406 West 25<sup>th</sup> Street  
New York, NY 10001

Re: Freedom of Information Law (“FOIL”) Request No. 2023-095358 February 21, 2024  
Appeal of the NYS Department of Financial Services’ February 21, 2024 Determination

Dear Mr. Larson:

By letter dated February 21, 2024, you are appealing the NYS Department of Financial Services’ (the “Department”) February 21, 2024 Determination (the “Determination”) pursuant to Public Officers Law (“POL”) § 89, which denied your FOIL request seeking:

Dear Madam or Sir: On August 2, 2022 the Superintendent of Financial Services Adrienne A. Harris announced that Robinhood Crypto, LLC (“RHC”) would pay a \$30 million penalty to New York State for significant failures in the areas of bank secrecy act/anti-money laundering (“BSA/AML”) obligations and cybersecurity that resulted in violations of the Department’s Virtual Currency Regulation (23 NYCRR Part 200), Money Transmitter Regulation (3 NYCRR Part 417), Transaction Monitoring Regulation (23 NYCRR Part 504), and Cybersecurity Regulation (23 NYCRR Part 500). xNY.io - Bank.org would like to

1. receive any and all records related to NY-DFS' investigation of Robinhood Crypto. Including (but not limited to) records concerning the bespoke Supervisory Agreement Robinhood Crypto has with the Department of Financial Services mentioned here: [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202208021](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208021).
2. In addition, xNY.io - Bank.org seeks any and all records concerning New York's approach to Robinhood Crypto and Goldman Sachs compliance programs mandated by the United States Department of Justice, Criminal Division, Fraud Section and Money Laundering and Asset Recovery Section mentioned here: [https://drive.google.com/file/d/1Yx88RMoeLyyfbNK0RtPl4r-m8N21\\_1Sp/view?usp=drivesdk](https://drive.google.com/file/d/1Yx88RMoeLyyfbNK0RtPl4r-m8N21_1Sp/view?usp=drivesdk).

3. Finally, xNY.io - Bank.org seeks records concerning New York's regulatory approval of Robinhood Crypto engaging a fine of \$30M to implement heightened controls and additional procedures and policies relating to electronic surveillance and investigation, due diligence on transactions or clients and the use of third-party intermediaries across business units; and enhancing anti-corruption training for all management and relevant employees.

The Department construed your FOIL request as seeking the records, correspondence, and work product exchanged between Robinhood and the Department in accordance with the Department's August 1, 2022 Consent Order (hereinafter, collectively referred to as the "Robinhood Investigative Materials").

## **I. Background**

The Determination informed you that your FOIL request for the Robinhood Investigative Materials was denied pursuant to POL § 87(2)(e) (the "Law Enforcement Exemption"), and POL § 87(2)(a) (the "Statutory Exemption") via New York Banking Law § 36(10) ("BL § 36(10)") because the Robinhood Investigative Materials are the subject of an ongoing law enforcement investigation and that releasing the records would interfere with the Department's investigative process. The Department also explained to you that the correspondence arising out of the Department's ongoing supervision of Robinhood and the records transmitted to the Department in connection with its supervision of Robinhood are protected from disclosure pursuant to BL § 36(10).

In your February 21, 2024 Appeal ("FOIL Appeal"), you state that

"In accordance with Public Officers Law § 89(4), xNY.io - Bank.org elects to appeal this determination to withhold the Robinhood BitLicense Records. Turn this matter as we will, any side whatsoever appears to require obstruction of justice. We further demand NY-DFS send xNY.io - Bank.org an update on the aforementioned appeal within five (5) business days."Reserving all rights, xNY.io - Bank.org is seeking relevant relief in California on Robinhood."

## **II. Discussion**

As a preliminary matter, after a close review of your original FOIL request and your FOIL Appeal, I construe your FOIL appeal of the ". . . determination to withhold the Robinhood BitLicense Records" as that you are appealing the Determination to withhold the Robinhood Investigative Materials, (records related to the 2022 Robinhood Consent order).

After a de novo, thorough review of your FOIL Request, the Determination and the relevant records, I find that the Determination was correct and I affirm the conclusion to withhold the Robinhood Investigative Materials under POL § 87(2)(e) and POL § 87(2)(a).

The Law Enforcement Exemption, set forth in POL § 87(2)(e), exempts from disclosure records that:

are compiled for law enforcement purposes only to the extent that disclosure would:

- i. interfere with law enforcement investigations or judicial proceedings, ...;
- ii. deprive a person of a right to a fair trial or impartial adjudication;
- iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or
- iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures.

Although the Determination relied only on prong (i) of POL § 87(2)(e) as the basis for denying your FOIL Request, as discussed below, I find that prong (ii) of POL § 87(2)(e) also applies. Prongs (i) and (ii) set forth in POL § 87(2)(e) exempt from disclosure records compiled for law enforcement purposes, and which if disclosed would, among other things, respectively: (i) interfere with law enforcement investigations or judicial proceedings; or (ii) deprive a person of a right to fair trial or impartial adjudication. One of the main purposes behind New York’s FOIL law enforcement exemption is to protect an agency’s investigative process from being compromised due to the premature release of information concerning an ongoing Department investigation or judicial proceeding. POL § 87(2)(e)(i) recognizes that release of law enforcement records would, for example, interfere with and have a chilling effect on an ongoing investigation or judicial proceeding. See, e.g., Matter of Pittari v. Pirro, 258 A.D.2d 202, 205 (2nd Dep’t 1999). Disclosure could reveal, among other things, the names of witnesses as well as the nature and scope of the Department’s investigation and provide targets of the investigation with information that would enable them to target witnesses so that they could impede or evade prosecution.

Moreover, any premature disclosure of the withheld records would not only interfere with the Department’s ongoing investigation but would also deprive an entity of a right to a fair trial or an impartial adjudication if the investigation culminates in such a proceeding, and hence the withheld records fall within the prong of the law enforcement exemption set forth in POL § 87(2)(e)(ii). Release of the withheld records would threaten the Department’s ability to conduct a full investigation that is fair to all parties, including any targets of the investigation. The law enforcement exemption, in POL § 87(2)(e)(ii), serves to protect targets of an investigation from premature release of ongoing law enforcement information so they are not deprived of the “right to a fair trial or impartial adjudication.” Id.

As explained herein and in the Determination, the Robinhood Investigative Materials are the subject of an ongoing Department investigation. Consequently, any premature release of the records would interfere with the ongoing Department’s investigation and could also deprive the target of the investigation the right to a fair trial or impartial adjudication, should the investigation lead to such proceedings. Accordingly, I find that the Department properly denied your FOIL request pursuant to the law enforcement exemption in prong (i) of POL § 87(2)(e) and find that prong (ii) of POL § 87(2)(e) is similarly applicable to such records.

Additionally, the Determination denied your FOIL request pursuant to POL § 87(2)(a), which provides that an agency may deny access to records or portions thereof that are “specifically exempted from disclosure by state or federal statute” and the applicable statute here is BL § 36(10).

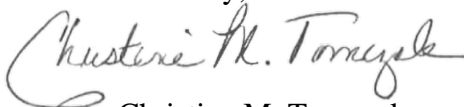
BL § 36(10) states, in pertinent part, that reports of examinations and investigations and correspondence and memoranda concerning or arising out of such examinations and investigations are confidential and shall not be made public. The statute fosters open communication between the Department and its regulated institutions, a necessity for effective regulation of financial institutions, by ensuring that records transmitted to the Department in connection with its supervision of a financial institution, including an investigation of regulatory matter, are protected from disclosure.

Here, even if the Robinhood Investigative Materials were not the subject of an active ongoing investigation by the Department, because those records were compiled for and used in a supervisory examination, there is an expectation that the records will remain confidential to encourage candor and open communication between the Department and Robinhood. Release of such sensitive records may have a chilling effect on the willingness of regulated entities to freely share information and willingly cooperate with supervisors to resolve issues, thus, confidentiality is critical to the Department's ability to perform its regulatory mandate and purpose, including its ability to investigate and remediate improper conduct of virtual currency entities that broadly impacts all New Yorkers. While the Department possesses the power and authority to investigate such entities and to compel production of documents from these entities, uncoerced cooperation is preferable and crucial to achieving an expedient resolution of supervisory matters in question. Accordingly, I find that the exemption set forth in BL § 36(10) covers the Robinhood Investigative Materials entirely.

### **III. Conclusion**

Therefore, based on the aforementioned analysis, I affirm the Determination and deny your FOIL appeal.

Sincerely,



Christine M. Tomczak  
Assistant Counsel

cc: NYS Committee on Open Government  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231

Stephanie Mazza  
Associate Attorney