

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

January 26, 2023

Transmitted by Email to

Mr. Gunnar Larson
406 West 25th Street
New York, New York 10001

g@xny.io

Re: Freedom of Information Law request No. 2022-090440: Appeal dated September 30, 2022 of the Department of Financial Services' September 19, 2022 response

Dear Mr. Larson:

By email dated September 30, 2022, you are appealing pursuant to New York State Public Officers Law Section 89, the Department of Financial Services' (the "Department") September 30, 2022 response (the "Determination") to your Freedom of Information Law ("FOIL") request No. 2022-090440 for

"[A]ny and all records related to New York State and NYS-DFS' approach to enforcement of "Permission for Interlocking Directors and Officers" as per outlined here [https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/other/Permission_for Interlocking Directors_and_Officers](https://www.dfs.ny.gov/apps_and_licensing/banks_and_trusts/other/Permission_for_Interlocking_Directors_and_Officers). In addition, we would like to receive and all records associated with filed permissions for interlocking directorates at the NAACP and Goldman Sachs, specific to Mr. Rose (<https://naacp.org/people/peter-rose> and Mr. Ogunlesi (<https://www.goldmansachs.com/about-us/people-and-leadership/leadership/board-of-directors/adebayo-o-ogunlesi.html>)). Finally, we would like to receive any and all records related to NY-DFS monitoring of Goldman Sachs' minority scholarship fund support in Africa (and how any non-approved interlocking directorates may be engaged in AML violations)."

In your appeal, you state that "[s]pecific to scholarships in Africa, Goldman Sachs has issued advertisements as principal funder of Africa's largest online University. DFS having no records

associated with ‘one of the world’s largest minority scholarship programs. . .’ that is funded out of New York would allude to willful negligence on behalf of New York’s financial regulators.”

The Determination informed you that a search was conducted for records relating to (1) Part 70¹ compliance for Messrs. Ogunlasi and Rose and (2) references to Goldman Sachs’ minority scholarship programs in Africa. It also informed you that your request for “any and all records related to New York State and NY-DFS approach to enforcement of ‘Permission for Interlocking Directors and Officers’ ” was vague and improper.

After conducting a de novo search of the Department’s files concerning the above described (1) and (2), I was unable to locate any records concerning these matters. Therefore, I affirm the Determination in its conclusion that there are no records regarding these subjects in the Department’s files.

Furthermore, with your respect to your request for “any and all records related to New York State and NY-DFS approach to enforcement of ‘Permission for Interlocking Directors and Officers’ ” I find that the request does not not reasonably describe the records sought from the Department because FOIL requires that a requestor must describe the records sought and provide sufficient detail so that the agency can identify and locate the records requested.

A FOIL request is not reasonably described if the agency cannot locate the requested record using its indexing or filing system, or, with respect to the agency’s electronic records, there is no single search term or combination of search terms that will result in the location of the record. See Asian American Legal Defense & Educ. Fund v. NYC Police Dep’t, 41 Misc.3d 471 (Sup. Ct. N.Y. County 2013), aff’d 125 A.D.3d 531 (1st Dep’t 2015). Additionally, where an agency must manually review voluminous records simply to locate responsive records, courts have held that such a request does not reasonably describe the records sought. Badar v. Bove, 273 A.D.2d Dep’t 2000), appeal den. 95 N.Y.2d 764 (2000) (finding that a request for “[a]ll notes, records, correspondence, meeting minutes and other records related to the adoption and/or revision of the Village Zoning Code’s prohibition of commercial activity” was not reasonably described).

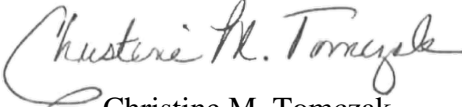
When a FOIL request requires an agency to make subjective judgments to determine whether to determine whether a record is responsive, that a request may be found to have not reasonably described the records. For instance, in the Committee on Open Government (“Committee”) Opinion No. FOIL-AO-11960 (February 17, 2000), the Committee opined that a FOIL request that sought records “tending to support” a particular statement, or “utilized”, “used” or “relating to” “various activities” was not reasonably described request for records under Public Officers Law Article 6. A response to such a request “would involve making subjective judgments a series of judgments based on opinions, some of which would be subjective, mental impressions”, and require “ascertaining which records might ‘tend to support’ a statement [that] would involve an

¹ General Regulations of the Superintendent Part 70 (Interlocking Directors and Officers of Banking Organizations and Bank Holding Companies) concerns the Superintendent granting permission to an executive officer (as defined in Part 70.1) of one banking institution to be an executive officer at another banking institution.

attempt to render a judgment regarding the use, utility, accuracy or value of records.” The Committee further opined that “for purposes of [FOIL], a request for such materials would not meet the standard of ‘reasonably describing’ the records sought, for such a request would not enable the Department to locate and identify the records in the manner envisioned by that statute.” See also Committee Opinion No. FOIL-AO-12012 (March 28, 2000), in which the Committee opined that a request for “documentation utilized by SED to evaluate ‘certain needs, actions and functions’ was not reasonably described request for records under FOIL.

Accordingly, I affirm the Department’s Determination.

Sincerely,

A handwritten signature in cursive script that reads "Christine M. Tomczak". The signature is written in black ink and is positioned to the left of the printed name.

Christine M. Tomczak
Assistant Counsel

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