

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

SENT VIA EMAIL
(G@xny.io)

October 22, 2024

Gunnar D. Larson
xNY.io – Bank.org
406 West 25th Street
New York, NY 10001

Re: Freedom of Information Law (“FOIL”) Tracking No. 2024-097305

Dear Gunnar D. Larson:

I write in response to the FOIL request that you submitted to the New York State Department of Financial Services (“Department”) on February 2, 2024, which states as follows:

“Dear Madam or Sir: On March 30, 2022 New York Magazine published a profile of NY-DFS Superintendent Adrienne Harris titled "Crypto’s Most Powerful Regulator Is Here Adrienne Harris, New York’s financial watchdog, has enormous sway over the industry’s future"

(<https://nymag.com/intelligencer/2022/03/adrienne-harris-is-cryptos-most-powerful-regulator.html>). The profile of Superintendent Harris quotes "... that she would recuse herself from any dealings with companies she has conflicts with." xNY.io - Bank.org seeks access to any and all records specific to Superintendent Harris' recusal(s) as of February 1, 2024. Thank you, Gunnar -- Gunnar Larson xNY.io | Bank.org MSc - Digital Currency MBA - Entrepreneurship and Innovation (ip) G@xNY.io +1-917-580-8053 New York, New York 10001.”

The Department has records that are responsive to your request, which are being withheld pursuant to NY Public Officers Law (“NY POL”) § 87(2)(a) and (g) and New York Civil Practice Law and Rules (“NY CPLR”) § 4503.

NY POL § 87(2)(a) and NY CPLR § 4503

NY POL § 87(2)(a) exempts from disclosure records that “are specifically exempted from disclosure by state or federal statute.” The state statute that exempts from disclosure the records that you request is NY CPLR § 4503(a), which provides that materials protected by the attorney-client privilege are exempt from disclosure. This privilege applies to confidential communications between counsel and client when the communication is “made for the purpose of obtaining legal advice and directed to an attorney who has been consulted for that purpose.” Rossi v. Blue Cross & Blue Shield of Greater N.Y., 73 N.Y.2d 588, 593 (1989) quoting Matter of Grand Jury Subpoena [Bekins Record Storage Co., Inc.], 62 N.Y.2d 324, 329 (1984). Consequently, the Department is withholding the responsive records from disclosure pursuant to Public Officers Law § 87(2)(a) and CPLR § 4503(a), because they are privileged.

NY POL § 87(2)(g)

Additionally, NY POL § 87(2)(g) exempts from disclosure records that are “inter-agency or intra-agency materials which are not: i. statistical or factual tabulations or data; ii. instructions to staff that affect the public; iii. final agency policy or determinations; [or] iv. external audits, including but not limited to audits performed by the comptroller and the federal government[.]”

The internal records that you request contain the very kind of information that the exemption in NY POL § 87(2)(g) is designed to protect. In New York Times Co. v. City of New York Fire Dep’t, 4 N.Y.3d 477, 488-89 (2005), the Court of Appeals held that “[t]he point of the intra-agency exception is to permit people within an agency to exchange opinions, advise and criticism freely and frankly, without the chilling prospect of public disclosure . . . [and] to permit the internal exchange of candid advice and opinions between agency employees.” See also Miller v. New York State Dep’t of Transp., 58 A.D.3d 981, 984 (3rd Dep’t 2009) (holding that “[t]he interagency and intraagency exemption applies to records that are deliberative, i.e., communications exchanged for discussion purposes not constituting final policy decisions.”)

Because the internal records you seek contain opinions, recommendations, evaluations, subjective commentary, and deliberative communications, they are exempt from disclosure under NY POL § 87(2)(g) and will not be disclosed.

Conclusion

In accordance with POL § 89(4), you may appeal this determination within 30 days by sending an email to FOIL.Appeals@dfs.ny.gov.

Very truly yours,

Pascale Jean-Baptiste

Pascale Jean-Baptiste
FOIL Officer