

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

November 17, 2022

Transmitted by Email

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

g@xny.io

Re: Freedom of Information Law request No. 2022-089772: Appeal dated July 1, 2022 of the Department of Financial Services' June 30, 2022 response

Dear Mr. Larson:

By email dated July 1, 2022, you are appealing pursuant to New York State Public Officers Law Section 89, the Department of Financial Services' (the "Department") June 30, 2022 response (the "Determination") to your Freedom of Information Law ("FOIL") No. 2022-089772, which states as follows:

"Many experts are concerned about MIA Coin and resulting NYCCoin disasters. We would like to receive any and all documents related between the NY-DFS Superintendent and the New York City Mayor's office related to NYCCoin".

The Determination informed you that your FOIL request did not reasonably describe the records that you 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. See *Konigsberg v. Coughlin*, 68 N.Y.2d 245 (1986); *In re Farbman & Sons v. NYC Health & Hosps. Corp.*, 62 N.Y.2d 75 (1984); *Matter of Wright v. Hippolyte*, 2014 N.Y. Misc. LEXIS 1247, 2014 NY Slip Op 301705 (U) (Sup. Ct. N.Y. County 2014).

The Determination further explained that 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

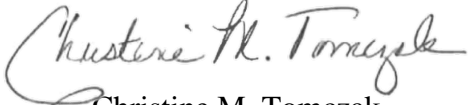
agency's electronic records, there is no single search term or combination of search terms that will result in the location of the record. See Asian American Legal Defense & Educ. Fund v. NYC Police Dep't, 41 Misc.3d 471 (Sup. Ct. N.Y. County 2013), aff'd 125 A.D.3d 531 (1st Dep't 2015). Additionally, 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 reasonable described).

Finally, the Determination explained that when a FOIL request requires an agency to make subjective judgments to determine whether a record is responsive, that 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 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.

I have reviewed your FOIL request and I agree with the Determination that the request does not reasonably describe the records that you request from the Department. The Department is unable to conduct a reasonable search of the Department's paper and electronic files using the broad terms and parameters that you employ in your request and the case law and Committee opinions cited above fully support this conclusion.

Accordingly, I affirm the Department's Determination and your FOIL appeal is denied.

Sincerely,

A handwritten signature in cursive script that reads "Christine M. Tomczak". The signature is written in black ink and is positioned above 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