

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

July 25, 2023

BY: E MAIL to g@xny.io

Gunnar Larson
xNY.io

Re: Freedom of Information Law request No. 2022-090560: Appeal dated October 13, 2022 of the Department of Financial Services' October 12, 2022 response

Dear Mr. Larson:

By email dated November 2, 2022, you are appealing pursuant to New York State Public Officers Law Section 89, the Department of Financial Services' (the "Department") October 12, 2022 response (the "Determination") to your Freedom of Information Law ("FOIL") request No. 2022-090627 for copies of:

"... any and all records, relating to NY-DFS' 2021 Apple Card Investigation. This is one part of a broader discussion we must have about equal access. On March 23, 2021, Mr. Linda Lacewell published NY-DFS's Findings on Apple Card and its Underwriter Goldman Sachs Bank. As the former Superintendent of NY-DFS, Ms. Lacewell's stone faced propaganda assured that Apple Card did not discriminate against women while under Goldman Sachs management. The red flags started to appear when an authorized user drew attention to the following: A person who relies on a spouse's access to credit, and only accesses those accounts as an authorized user, may incorrectly believe they have the same credit profile as the spouse. We recently collated 61 highlights to the Report on Apple Card Investigation from March 2021. <https://drive.google.com/file/d/1xH160KyXzB-MVqlznMWDE9w8RRdmZCw/view>. The Apple Card investigation was to access women's access to equitable finance. The integrity of the Apple Card investigation must be rationally considered as flawed. We would like to receive any and all records of Ms. Linda Lacewell's (emails, texts, and similar) involvement with the 2021 Card report. We would like to receive any and all records to NY-DFS association to evaluating Ms. Linda Lacewell's ability to score a report specific to the Apple Card's core subject of credit access for women. Finally, we would like to receive any and all records related to NY-DFS

guidance on Interlocking Directorates
(https://www.dfs.ny.gov/apps_and_licensing_banks_and_trusts/other/Permission_for_Interlocking_Directors_and_Officers), specific to Apple’s Board of Directors and Goldman Sachs’ Board of Directors.” [Sic]

In your appeal, you state:

“NY-DFS’ Apple Card Report records requested are key to determining any collusion between former Superintendent Lacewell and Goldman Sachs concerning women’s access to Apple Card. It would appear Bloomberg’s reporting today conflicts with NY-DFS Apple Card Investigation.” [Sic]

The Determination informed you that Public Officers Law (“POL”) § 89(3) requires a FOIL request to reasonably describe the records sought meaning that the description of the documents sought must be sufficient to allow the agency to locate and identify the documents requested.¹ To support its conclusion, the Determination explained that the New York State Committee on Open Government (the “Committee”), which is responsible for, inter alia, issuing advisory opinions regarding FOIL, has opined that “[w]hether a request reasonably describes the records sought . . . may be dependent upon the terms of a request, as well as the nature of an agency’s filing or record-keeping system.” Committee Opinion No. FOIL-AO-16073 (July 17, 2006).²

The Determination also informed you that your FOIL request specifically failed to meet the “reasonably describe” requirement in POL § 89(3) because of the very broad nature of the records requested and your use of such expansive phrases such as “any and all,” and “relate to” when applied to excessively broad categories.

I construe your FOIL request as four separate items:

- 1) Any and all records relating to NY-DFS’ 2021 Apple Card Investigation;
- 2) Any and all records of Ms. Linda Lacewell’s (emails, texts, and similar) involvement with the 2021 Card report;
- 3) Any and all records relating to NY-DFS association to evaluating Ms. Linda Lacewell’s ability to score a report specific to the Apple Card’s core subject of credit access for women; and
- 4) Any and all records related to NY-DFS guidance on Interlocking Directorates.

With respect to items 1) and 2), I conducted a *de novo* search of the Department’s records, and the Department has located additional records that may or may not be responsive to your request.

¹ See Matter of Farbman & Sons v. New York City Health and Hosps. Corp., 62 NY2d 75 (1984); Matter of Wright v Hippolyte, 2014 N.Y. Misc. LEXIS 1247, 2014 NY Slip Op 30705 (U) (Sup. Ct. N.Y. County March 20, 2014).

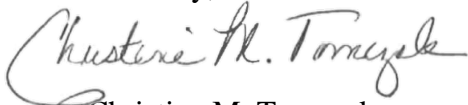
² Additionally, in the Committee’s Opinion No. FOIL-AO-11960 (February 17, 2000), it opined that a FOIL request that sought records ‘tending to support’ a particular statement, or ‘utilized’, ‘used’ or ‘relating to’ various activities of the Department of Environmental Conservation” was not a reasonably described request for records under POL Article 6. The Committee stated that a response to such a request “would involve making 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 held 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 [agency] to locate and identify the records in the manner envisioned by that statute.”

Accordingly, I am remanding this matter back to the records access officer so that a review can be conducted and a determination made as to, among other things, whether: (i) such additional records or any portions of such additional records are responsive to your request; and (ii) if responsive to your request, whether such additional records or any portions thereof are exempt from disclosure under FOIL, or are otherwise releasable to you.

With respect to item 3), I find that the request does not reasonably describe the records sought as required by POL § 89(3) meaning that your description of the records sought is not sufficient to allow the Department to locate and identify the records that you are requesting.

With respect to item 4) regarding Part 70 of the General Regulations of the Superintendent (Interlocking Directors and Officers of Banking Organizations and Banking Holding Companies), the Department has not issued an Industry Letter or any other written guidance regarding Part 70 and, therefore, there are no records responsive to your request.

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