



Homeland Security and Emergency Services

KATHY HOCHUL
Governor

JACKIE BRAY
Commissioner

July 26, 2022

Gunnar Larson
xNY.io - Bank.org, PBC

Re: Appeal of FOIL Number DHSES-22-06-028

Dear Mr. Larson,

You are being provided with this response to your Freedom of Information Law (FOIL) appeal in accordance with section 89(4)(a) of the Public Officers Law and section 10025.9 of Title 9 of the New York Codes, Rules, and Regulations.

Your initial request was received by the New York State Division of Homeland Security and Emergency Services (DHSES) on June 24, 2022. This request sought:

“any and all records pertaining to information concerning if a St. Bernard named ‘Brody’ could potentially be harmed (or, harrassed) by sonic or microwave (or, any other form of technology similar) surveillance while living in Chelsea, Manhattan. Furthermore, we would like to receive all records pertaining to New York State's approach to Gotham software intellectual property.”

On July 12, 2022, the DHSES Records Access Officer (RAO) responded to your request with a letter stating that DHSES “has conducted a diligent search for records and was not able to locate any records responsive to your request.” That same day, you responded by email stating: “We would like to appeal this decision.”

Please note that, in instances where an agency identifies responsive records but withholds those records from public disclosure, the FOIL administrative appeals process is a means for challenging that denial of access to the requested records. Here, there was no denial of access to records. Rather, DHSES conducted a diligent search, and the RAO informed you that DHSES did not locate any records responsive to your request. Since DHSES conducted the diligent search as required, and since no responsive records were identified, there are no specific records to which you have been denied access. Therefore, your appeal of the RAO’s response is hereby denied.

Lastly, as a general notice, a person denied access to a record in an appeal determination has a right to judicial review of that decision pursuant to Article 78 of the Civil Practice Law and Rules.

Sincerely,

James Callahan
Senior Attorney