



KATHY HOCHUL
Governor

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Superintendent

SENT VIA EMAIL

(g@xny.io)

October 12, 2022

Gunnar Larson
xNY.io
406 West 25th Street
1RE
New York, NY 10001

Re: Freedom of Information Law (“FOIL”) Tracking No. 2022-090345

Dear Gunnar Larson:

I write in response to the FOIL request that you submitted to the New York State Department of Financial Services (“Department”) on March 5, 2022, which states as follows:

“We would like to receive any and all records relating to any coordination (and/or no coordination) related to the Goldman Sachs Deferred Prosecution Agreement and the PayPal Conditional Bitlicense award. May we kindly submit: October 21, 2020, PayPal Conditional BitLicense: https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202010211 October 22, 2020, Goldman Sachs Deferred Agreement: <https://www.justice.gov/usao-edny/pr/goldman-sachs-resolves-foreign-bribery-case-and-agrees-pay-over-29-billion> As of July 23, 2021 Goldman Sachs held \$1.83B in PayPal Stock (PYPL). The New York State Common Retirement Fund held \$562.71M and the New York State Teachers Retirement Fund held \$369.54M. With these figures, you can xNY.io would like to assess any and all press/media (and all other) coordination on the aforesaid announcements.”

Public Officers Law (“POL”) § 89(3) requires a FOIL request to reasonably describe the records sought. This means that the description of the documents sought must be sufficient to allow the agency to locate and identify the documents requested. See Matter of Farbman & Sons v New York City Health & 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). The Committee on Open Government, 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 on Open Government ("Committee") Opinion No. FOIL-AO-16073 (July 17, 2006). 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 Public Officers Law 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."

Your FOIL request fails to meet the "reasonably describe" standard in POL § 89(3) because it includes expansive phrases such as "any and all," and "related to" applied to excessively broad categories. Such vague phrases are imprecise terms that require Department staff to make subjective judgments as to whether a document is responsive to your FOIL request. When such subjective judgments are required of staff, the FOIL request may be denied for failure to meet the reasonably describe requirement in POL § 89(3). Accordingly, the Department is denying your FOIL request on the basis that the request is not reasonably described.

Please note that the Department stands ready to respond to any new FOIL request that you submit that (i) more specifically describes the records that you seek to enable the Department to conduct a reasonable search for such records, (ii) does not contain vague and imprecise terms such as "any and all" and "related to" applied to excessively broad categories, and (iii) does not require Department staff to make subjective judgments as to whether a given record is responsive to your request.

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
Office of General Counsel