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**SENT VIA EMAIL**

([g@xny.io](mailto:g@xny.io))

October 12, 2022

Gunnar Larson  
xNY.io  
New York, NY 10001

**Re: Freedom of Information Law (“FOIL”) Tracking No. 2022-090560**

Dear Gunnar Larson:

I write in response to a FOIL request that you submitted to the New York State Department of Financial Services (“Department”) on March 27, 2022, which states as follows:

“We would like to receive 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 credit access. On March 23, 2021, Ms. Linda Lacewell published NY-DFS' 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/1xH16OKyuXzB-MVqIznMWDE9w8RRdmZCw/view> The Apple Card investigation was to assess 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 Apple 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](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.”

Public Officers Law (“POL”) § 89(3) requires a FOIL request to reasonably describe the records sought. This means that the description of the records 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” standard in POL § 89(3). Accordingly, the Department is denying your FOIL request on the basis that your 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](mailto:FOIL.Appeals@dfs.ny.gov).

Very truly yours,

*Pascale Jean-Baptiste*

Pascale Jean-Baptiste

FOIL Officer

Office of General Counsel