

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

July 15, 2024

Transmitted by Email to g@xny.io

Mr. Gunnar Larson
xNY.io – Bank.org
New York, NY 10001

Re: Freedom of Information Law (“FOIL”) Request No. 2023-095446 August 8, 2023 Appeal of the NYS Department of Financial Services’ August 3, 2023 Determination

Dear Mr. Larson:

I write in response to your correspondence dated August 8, 2023 (“2023 FOIL Appeal”), in which you appeal the August 3, 2023 determination (the “2023 Determination”) of the New York State Department of Financial Services (the “Department”), which denied your FOIL request as duplicative. The 2023 Determination did not deny you access to any agency records, but instead advised you that since your request was duplicative, there is no basis for appeal. As a reminder, a denial of access to records is the basis for filing an appeal under Public Officers Law (“POL”) § 89(4)(a), which states that “any person denied access to a record may within thirty days appeal in writing such denial...” As further explained below, your 2023 FOIL Appeal is deemed moot.

I. Background

Your FOIL request dated July 11, 2023 (the “2023 FOIL Request”) stated the following:

Dear Madam or Sir:

On July 22, 2022 NY-DFS denied xNY.io - Bank.org records access STX custody in New York. NY-DFS' memo to our attention suggests STX records were held as secret given a current investigation:

https://drive.google.com/file/d/1xfUJA26SBO_n_RYIVyo6QefIWy5HgKTH/view?usp=drivesdk. Today, xNY.io - Bank.org renews our records access request and/or all NY-DFS correspondence regarding approval of Stacks (STX) custody in New York State:

https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/approved_entities/number”. Such records may include the approval letter sent by the Department regarding Blockstacks (STX), the virtual currency of Coinbase Custody Trust Company LLC (the “Requested Record”). Furthermore, we seek to learn if NY-DFS has a “confidential and shall not release” mandate relating to the STX and NYCCoin relationship similar to the Office of the Mayor of New York City. NY-DFS should be open to sharing STX records, as the City of Miami has here:

https://drive.google.com/file/d/1IrQwP46alrnQXRxIoXxm8kifZMVTRB_x/view?usp=drivesdk.

As noted in your 2023 FOIL Request, this is duplicative of your previous FOIL request made on February 11, 2022 (the “2022 FOIL Request”). The Department denied the 2022 FOIL Request by letter dated July 1, 2022 (“2022 Determination”) as the responsive record is exempt from disclosure pursuant to POL § 87(2)(a) by way of New York Banking Law (“NYBL”) § 36(10), which provides that reports of examinations and investigations of companies supervised or chartered under the Banking Law, and correspondence and memoranda concerning or arising out of such examinations and investigations, are confidential and shall not be made public. Following the 2022 Determination, you submitted an appeal on July 1, 2022, and your appeal was denied on July 22, 2023 (“2022 Appeal Determination”). The 2022 Appeal Determination reiterated that the record you requested is required to be kept confidential and exempt from disclosure under NYBL § 36(10) because it arose out of the Department’s examination and investigation of STX for custody services.

Over a year later on July 11, 2023, and without any change in circumstances, you submitted a duplicate FOIL request, which is the subject of your 2023 FOIL Appeal.

By email dated August 3, 2023 (“2023 Determination”), in response to your 2023 FOIL Request dated July 11, 2023, the Department issued the 2023 Determination advising you that your 2023 FOIL Request was denied as duplicative. Subsequently, you submitted the 2023 FOIL Appeal to the Department stating, “We kindly elect to appeal this determination on STX records access.” It is noted that the 2023 FOIL Appeal does not include any legal analysis or argument as to why the 2023 Determination is in any way incorrect.

II. Discussion

At the outset, I note that your 2023 FOIL Appeal does not specify any grounds or assertions upon which you base your appeal. You simply write that you “elect to appeal this determination.”

As noted above, POL § 89(4)(a) provides for an appeal when a person has been denied access to an agency’s records. Specifically, POL § 89(4)(a) states, in pertinent part, that “any person denied access to a record may within thirty days appeal in writing such denial.” After reviewing this matter, I find that the 2023 Determination was not a denial and advised you that your 2023 FOIL request was duplicative of your 2023 FOIL Request, to the Department has already issued a final determination, and a determination on appeal.

As explained in the 2023 Determination, an agency is not required to address duplicative FOIL requests where the agency has already made its final determination as to the records sought, and there has been no change of circumstances that would result in a different response. *See, e.g., Matter of Walker v. Roque*, 137 A.D.3d 643 (1st Dep’t 2016) (finding that petitioner’s 2012 FOIL request was duplicative of his 1992 FOIL request seeking essentially the same materials pertaining to the same criminal case, notwithstanding that the prior request was more detailed than the instant request); *Garcia v. Div. of State Police*, 302 A.D.2d 755 (3d Dep’t 2003) (finding that petitioner’s 2000 FOIL request was nearly identical to a September 1999 request, which, in turn, was a more specific list of a 1993 FOIL request, and therefore that the Supreme Court has properly determined that the Article 78 proceeding was an improper attempt by petitioner to relitigate his prior Article 78 proceeding and respondent’s prior denial of his FOIL request); *see also Matter of Zarvela v. Banks*, 117 A.D.3d 1070 (2d Dep’t 2014), *leave to app. denied*, 24 N.Y.3d 906 (2014); *Pennington v. Clark*, 1 A.D.3d 912 (4th Dep’t 2003).

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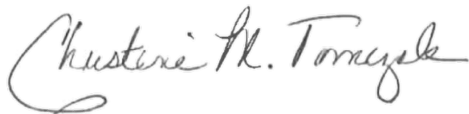
Here, your 2023 FOIL Request is duplicative of your previous 2022 FOIL Request for which the Department has made a final determination. Additionally, I find that there has been no change of circumstances since the Department issued its 2022 Determination or the 2022 Appeal Determination. The responsive record remains exempt from disclosure pursuant to POL § 87(2)(a) via BL § 36(10).

Finally, to the extent that you argue the Department should consider waiving any such exemptions, similar to the City of Miami, that request is outside the scope of FOIL and this appeal determination is limited to addressing only the matters pertaining to the Department's determination denying your FOIL request as duplicative.¹

III. Conclusion

Accordingly for the reasons stated about, your 2023 FOIL Appeal is deemed moot.

Sincerely,



Christine M. Tomczak
Assistant Counsel

cc: NYS Committee on Open Government
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¹ I note that the City of Miami's Legislation Resolution R-21-0337 which you provided as an example does not seem to be related to the approval of STX for custody services, only authorizes the city manager to accept gifts from CityCoins and does not mention STX, Coinbase Custody Trust Company, or any other custody services.