

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

SENT VIA EMAIL

Email: g@xny.io

June 30, 2022

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

Re: Freedom of Information Law (“FOIL”) Tracking No. 2022-089772

Dear Gunnar Larson,

I write in response to the FOIL request that you submitted to the New York State Department of Financial Services (“Department”), which has been assigned the above-referenced tracking number and reads, in relevant part, as follows:

“Many experts are concerned about MIA Coin and resulting NYCCoin disasters. We would like to receive any and all documents related between the NY-DFS Superintendent and the New York City Mayor’s office related to NYCCoin.”

The Freedom of Information Law (“FOIL”) requires a requester to reasonably describe the records sought, providing sufficient detail so that the agency can identify and locate the records requested. See *Konigsberg v. Coughlin*, 68 N.Y.2d 245 (1986); *In re Farbman & Sons v. NYC Health & Hosps. Corp.*, 62 N.Y.2d 75 (1984); *Matter of Wright v. Hippolyte*, 2014 N.Y. Misc. LEXIS 1247, 2014 NY Slip Op 30705(U) (Sup. Ct. N.Y. County 2014).

A FOIL request is not reasonably described if the agency cannot locate the requested record using its indexing or filing system, or, with respect to the agency’s electronic records, there is no single search term or combination of search terms that will result in the location of the record. See *Asian American Legal Defense & Educ. Fund v. NYC Police Dep’t*, 41 Misc.3d 471 (Sup. Ct. N.Y. County 2013), *aff’d* 125 A.D.3d 531 (1st Dep’t 2015). Additionally, where an agency must manually review voluminous records simply to locate responsive records, courts have held that such a request does not reasonably describe the records sought. *Bader v. Bove*, 273 A.D.2d 466 (2nd Dep’t 2000), *appeal den.* 95 N.Y.2d 764 (2000) (finding that a request for “[a]ll notes, records, correspondence, meeting minutes and other records related to the adoption and/or revision of the Village Zoning Code’s prohibition of commercial activity” was not reasonably described).

Moreover, when a FOIL request requires an agency to make subjective judgments to determine whether a record is responsive, that request may be found to have not reasonably described the records. For instance, in the Committee on Open Government (“Committee”) Opinion No. FOIL-AO-11960 (February 17, 2000), the Committee opined that a FOIL request that sought records “‘tending to support’ a particular statement, or

‘utilized’, ‘used’ or ‘relating to’ various activities” was not a reasonably described request for records under Public Officers Law Article 6. A response to such a request “would involve making subjective judgments 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 further opined 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 Department to locate and identify the records in the manner envisioned by that statute.” See also Committee Opinion No. FOIL-AO-12012 (March 28, 2000), in which the Committee opined that a request for “‘documentation utilized by SED to evaluate’ certain needs, actions and functions” was not a reasonably described request for records under FOIL.

Based upon the above, your FOIL request does not provide a reasonable description of records under Public Officers Law § 89(3). You ask for “any and all documents related between the NY-DFS Superintendent and the New York City Mayor’s office related to NYCCoin.”

The Department is unable to conduct a reasonable search for the records you seek because your request does not provide a specific domain name, or the specific employees of the New York City Mayor’s Office with which you believe that the Superintendent communicated. Nor does your request provide a specific timeframe for which you seek records, or the types of records that you seek. Therefore, your request does not meet the standard in Public Officers Law § 89(3) that a FOIL request must reasonably describe the records sought.

Please note that the Department stands ready to respond to any new FOIL request that you submit that (i) describes with reasonable specificity records that the Department may determine upon a reasonable search are maintained by it, (ii) does not contain ambiguous terms such as “relating”, “concerning” or “supporting” applied to excessively broad categories, and (iii) does not require the Department to engage in looking for a “needle in a haystack” or require Department personnel to guess whether a given record is responsive to your request.

You may appeal this determination that your FOIL request is not reasonably described within 30 days by writing to the Department via email to FOIL.Appeals@dfs.ny.gov.

Very truly yours,

Pascale Jean-Baptiste

Pascale Jean-Baptiste
FOIL Officer
Office of General Counsel