

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

September 27, 2022

Transmitted by E mail to g@xny.io

Mr. Gunnar Larson

Re: Freedom of Information Law ("FOIL") Tracking No. 2022-091931

Dear Mr. Larson:

I write in response to the Freedom of Information Law ("FOIL") request that you submitted to the New York State Department of Financial Services ("Department" or "DFS"), which has been assigned the above-referenced tracking number and states:

We would like to receive any and all records concerning the nature FOIL requests under appeal are managed. This may include a handbook or other guide with detailed instructions concerning precluding any obstruction claims. Sending you the very best

I asked you to clarify ambiguous phrases in your request on July 27, 2022. On July 27, 2022, you claimed your request was unambiguous and refused to do so.

Public Officers Law § 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

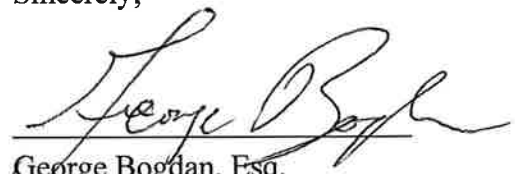
Committee stated that a response to such a request “would involve making a series of judgments based on opinions, some of which would be subjective, mental impressions”, and require “ascertaining which records might ‘tend to support’ a statement [that] would involve an attempt to render a judgment regarding 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” requirement in POL § 89(3) because the terms “... **concerning the nature FOIL requests under appeal are managed**” and “**obstruction claims** “ are vague and unintelligible. 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). Further, under POL § 89(3) the Department has no obligation to respond to innuendos, vague accusations or conspiracy theories you might choose to make.

Even if your FOIL request were reasonably described, the Department has no handbooks or guidebooks with detailed instructions for our FOIL appellate officers. DFS’ appellate officers follow what is required by Public Officers Law Article 6, the Committee on Open Government’s regulations (21 NYCRR 1401), and DFS’ own FOIL regulation (23 NYCRR 3).

In accordance with Public Officers Law § 89(4), you may appeal this determination to withhold the records described above within 30 days by writing to: FOIL Appeals Officer, New York State Department of Financial Services, One State Street, New York, NY 10004, or by sending an email to FOIL.Appeals@dfs.ny.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "George Bogdan", written over a horizontal line.

George Bogdan, Esq.
Senior Attorney
Office of General Counsel