

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

November 1, 2022

BY: E MAIL to g@xny.io
Gunnar Larson
xNY.io

Re: Freedom of Information Law ("FOIL") Tracking No. 2022-090627

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 April 4, 2022, which seeks copies of:

"Dear Madam or Sir: Today's memo requests records related to NY-DFS monitoring of \$10,610,000,000 of pledge funds (detailed below) specific to financial inclusion. xNY.io would like to receive any and all records related to NY-DFS' monitoring of Goldman Sachs' potential money laundering and other abuses of Goldman project, One Million Black Women, with \$10B in direct capital and \$100M in charity investments: <https://www.goldmansachs.com/our-commitments/sustainability/one-million-black-women/> xNY.io would like to receive any and all documents correlating NY-DFS monitoring of (or, confirming no correlation) the One Million Black Women fund related to any association to other Goldman student scholarship funds in Africa ... Furthermore, xNY.io would like to receive any and all documents, related to NY-DFS' regulatory scrutiny of interlocking directorates at the NAACP, Goldman Sachs, Wells Fargo and PayPal with potential collusion in leveraging marketplace spoofing tactics (or, records confirming no spoofing tactics) concerning \$810 million in pledge funds associated with the 2020 Mission Driven Banks whitepaper: https://drive.google.com/file/d/1rOXE7ierZcd8HlvNVy7hAYg7d86q_1dv/view?usp=sharing Attached and below, kindly find outline of the \$850M pledged: Goldman Sachs Industry: Financial Services Pledge Amount: \$250 million Use of Funds: Goldman Sachs has committed \$250 million for small business lending. Goldman Sachs will not issue these loans directly since it is not an approved small business loan provider in the United States. Instead, it will provide the financing to CDFIs and other mission-driven lenders to make the loans. Wells Fargo Industry: Banking Pledge Amount: \$50 million Use of Funds: Wells Fargo has pledged a \$50 million investment in African American MDIs. See Press Release PayPal Industry: Financial Services Pledge Amount: \$510 million Use

of Funds: PayPal has pledged \$500 million for a long-term economic opportunity fund to support African American and underrepresented minority businesses and communities. The initiative will include “bolstering the company’s relationships with community banks and credit unions serving underrepresented minority communities, as well as investing directly into African American and minority led startups and minority-focused investment funds.” PayPal deposited \$50 million in Optus Bank, an African American MDI in Columbia, South Carolina. PayPal will use another \$10 million for grants to African American-owned businesses affected by the COVID-19 pandemic or civil unrest surrounding protests. The very best, Gunnar Larson.”

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” requirement in POL § 89(3) because of the very broad nature of the records requested. The request includes expansive phrases such as “any and all,” and “relating 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). Additionally, to the extent that your FOIL request seeks records that contain any reference to the topics mentioned in your request, the Department is unable to locate such records because the Department does not have an indexing system that allows it to search all of its records by terms that may appear in such records. Accordingly, the Department is denying your FOIL request on the basis that the request is not reasonably described.

In accordance with Public Officers Law § 89(4), you may appeal this determination 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". The signature is written in a cursive style with a horizontal line underneath the name.

George Bogdan, Esq.

Senior Attorney

Office of General Counsel