

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. 2022-090441

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 March 16, 2022, which seeks copies of:

"Dear Madam or Sir: We would like to receive any and all records concerning NAACP, Goldman Sachs, Wells Fargo and PayPal collusion, where facts and figures beg the question of coordinated systematic racism associated with PayPal's conditional Bitlicense award. We would like to receive any records that would indicate NY-DFS' insights into both PayPal and Wells Fargo partnering to organize a clear scheme to profit off of New York's minority population (according to the details below). We would like to receive any and all records that indicate New York State NOT choosing to ignore the relevant facts associated with this matter. Furthermore, we would like to receive any and all records that indicate the New York State Retirement Fund is not being leveraged as a key investor in the associated scheme. Below kindly find detail that supports this records request: *March 11, 2022:* Bloomberg reported that Wells Fargo approved fewer than half of Black applicants were approved by the biggest bank mortgage lender: <https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/> *August 19, 2021:* Wells Fargo Launches Passive Bitcoin Fund for Wealthy Clients, minority and low income clients excluded: <https://www.nasdaq.com/articles/wells-fargo-launches-passive-bitcoin-fund-for-wealthy-clients-2021-08-19> *October 22, 2020: *PayPal first to receive NY conditional virtual currency 'Bitlicense.' PayPal Inc. became the first firm to receive a conditional virtual currency license from the New York State Department of Financial Services*: * [https://today.westlaw.com/Document/Ib5cd5e2f149c11ebbea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://today.westlaw.com/Document/Ib5cd5e2f149c11ebbea4f0dc9fb69570/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0) *July 23, 2021, Wells Fargo Stock Ownership: * Ownership (NYS:WFC) Total Shares Outstanding 13F Ownership # of 13 Holders Insider Ownership 4,107,998,274.00 77.05% 2,062.00 0.12% Top 10 13F Holders 13F Holders % Total Shares Held % of Portfolio Trend Prev. 8 Quarters Current Shares Market Value (B), USD New York State

THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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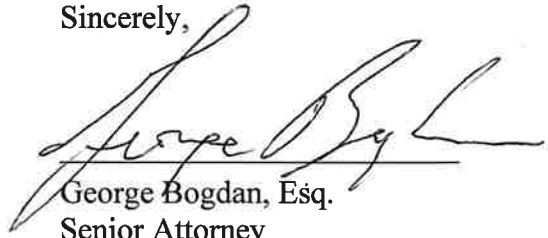
Common Retirement Fund 0.26% 0.46% 10,617,151 \$414.81M New York State Teachers Retirement System 0.13% 0.44% 5,219,084 \$203.91M Bank of New York Mellon Corp 0.77% 0.25% 31,624,345 \$1.24B *July 23, 2021, PayPal Stock Ownership: * Ownership (NAS:PYPL) Total Shares Outstanding 13F Ownership # of 13 Holders Insider Ownership 1,174,728,054.00 86.69% 2,661.00 6.11% Top 10 13F Holders 13F Holders % Total Shares Held % of Portfolio Trend Prev. 8 Quarters Current Shares Market Value (B), USD Bank of New York Mellon Corp 0.97% 0.57% 11,452,187 \$2.78B Goldman Sachs Group Inc 0.64% 0.46% 7,554,169 \$1.83B Wells Fargo & Co 0.64% 0.41% 7,465,572 \$1.81B New York State Common Retirement Fund 0.20% 0.62% 2,317,196 \$562.71M New York State Teachers Retirement System 0.13% 0.80% 1,521,757 \$369.54M.”

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 it includes vague and imprecise phrases such as “any and all,” and improperly requires Department staff to make subjective judgments concerning what records support the assertions made in 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", written over a horizontal line.

George Bogdan, Esq.
Senior Attorney
Office of General Counsel