

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

November 3, 2022

Transmitted by E mail to g@xny.io

Mr. Gunnar Larson

Re: Freedom of Information Law ("FOIL") Tracking No. 2022-092039

Dear Mr. Larson:

The New York State Department of Financial Services ("Department" or "DFS") closed your FOIL request, assigned tracking number 2022-091109, on July 22, 2022, on the grounds that it sought records from the Executive Chamber, not the Department. On August 1, 2022, you sent an email that you claimed was an appeal. Our appellate officer interpreted your request for "**[a]ny and all records concerning the Superintendent's said DFS role with Brex (Declaration on said disclosure form)**" as a new request directed to the DFS, which was assigned tracking number 2022-092039.

For the following reasons, your FOIL request is denied because it fails to meet the standard set forth in Public Officers Law ("POL") § 89(3), which 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. Agency employees are not required to engage in unreasonable efforts to locate records.

In the Committee on Open Government'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.” See also New York Civil Liberties Union v. New York Police Department, 2022 N.Y. Misc. Lexis 1051; 2022 Slip Op 30659(U) (Supreme Court, NY County, 2022)

Here, the vague language of your request would 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). Accordingly, the Department is denying your request as 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 cursive script that reads "George Bogdan". The signature is written in black ink and is positioned above the printed name and title.

George Bogdan, Esq.

Senior Attorney

Office of General Counsel