

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

SENT VIA EMAIL

(G@xny.io)

January 19, 2023

Gunnar D. Larson
xNY.io – Bank.org
406 West 25th Street
New York, NY 10001

Re: Freedom of Information Law (“FOIL”) Tracking No. 2022-089773

Dear Gunnar D. Larson:

I write in response to the FOIL request that you submitted to the New York State Department of Financial Services (“Department”) on January 26, 2022, which states as follows:

“Please submit any and all records related to the LendingClub.com September 11 Board of Directors resignation below. The date of the resignation is in question. You may understand the sensitive nature of the date of the resignation. Gunnar Larson Sun, Oct 24, 2021, 5:06 PM to Anuj, Investor, Press Hello there: Thank you very much for the reply. Gunnar On Sun, Oct 24, 2021, 11:36 AM Anuj Nayar wrote: Hi Gunnar On September 11, 2021, in connection with her nomination to serve as superintendent of the New York State Department of Financial Services, Adrienne Harris notified us of her resignation, effective September 12, 2021, from the Company’s Board. Details can be found in the 8k filed on 9/15/21 (below) <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001409970/bbc437e4-2920-4d5d-8e0d-86bca622f0ca.pdf> From: Gunnar Larson Date: Saturday, October 23, 2021 at 9:37 AM To: Investor Relations , Press Cc: Gunnar Larson Subject: [EXT] LendingClub: Current Board of Directors CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Dear Madam or Sir: Good day to you. Surveying market research, I was wondering if you can kindly confirm, from LendingClub's July 15, 2021 press release: Is Ms. Adrienne Harris currently a member of LendingClub's board of directors? <https://www.prnewswire.com/news->

releases/lendingclub-appoints-adrienne-harris-to-its-board-of-directors-301335198.html#financial-modal [prnewswire.com] Reviewing your website, Ms. Harris is not referenced:<https://www.lendingclub.com/company/leadership> Bloomberg and other sources do not reference Ms. Harris as a LendingClub board member: <https://www.bloomberg.com/quote/LC:US> [bloomberg.com] Sending you the very best regards. Thank you, Gunnar -- Gunnar Larson - xNY.io [xny.io] | Bank.org [bank.org] MSc [unic.ac.cy] - Digital Currency MBA [unic.ac.cy] - Entrepreneurship and Innovation (ip) G@xNY.io +1-646-454-9107 New York, New York 10001.”

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 “related to” and it does not clearly describe the records that you are seeking to enable the Department to conduct a reasonable search for those records. 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, the Department does not have an indexing system that allows it to search all of its paper and electronic 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.

Notwithstanding the foregoing issues with your FOIL request, please be advised that, in August of 2021, the Superintendent resigned from the Board of Directors of the Lending Club, effective September 12, 2021.

In accordance with POL § 89(4), you may appeal this determination within 30 days by sending an email to FOIL.Appeals@dfs.ny.gov.

Very truly yours,

Pascale Jean-Baptiste

Pascale Jean-Baptiste
FOIL Officer