

KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

January 26, 2023

Transmitted by Email to

Mr. Gunnar Larson
406 West 25th Street
New York, New York 10001

g@xny.io

Re: Freedom of Information Law request No. 2022-090627: Appeal dated November 2, 2022 of the Department of Financial Services' November 1, 2022 response

Dear Mr. Larson:

By email dated November 2, 2022, you are appealing pursuant to New York State Public Officers Law Section 89, the Department of Financial Services' (the "Department") November 1, 2022 response (the "Determination") to your Freedom of Information Law ("FOIL") request No. 2022-090627 for copies of:

“[M]emo 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.”

In your appeal, you state:

“For example, One Million Black Women's board of directors states inclusion of policy and social leadership from Apple. Mr. Bogdan, xNY.io - Bank.org has filed another FOIL request concerning DFS' recent "Apple Card Report." The Apple Card Report and associated DFS investigation focused on financial inclusion metrics for women in New York State. Between the Apple Card Report and One Million Black Women being under DFS' umbrell of oversight, it would appear no records being publicly available would signal potential marketplace spoofing. Furthermore, DFS' "Student Protection Unit" licenses and supervises student loan servicers, monitors student-related financial practices in New York, and educates and advocates for student consumers and their families about available financial products and services. As a "Bill and Melinda Gates Scholar" and a "Blockchain Scholar" and a "Al Neuharth Freedom Forum Scholar" I am aware of a scholarship program funded from New York targeting students in Africa. Mr. Bogdan, from New York this fund advertises over \$100M in scholarships for online degrees for students in Africa.” [Sic]

The Determination informed you that Public Officers Law (“POL”) § 89(3) requires a FOIL request to reasonably describe the records sought meaning that the description of the documents sought must be sufficient to allow the agency to locate and identify the documents requested.¹ To support its conclusion, the Determination explained that the New York State Committee on Open Government (the “Committee”), 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 Opinion No. FOIL-AO-16073 (July 17, 2006). Additionally, 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’

¹ See Matter of Farbman & Sons v. New York City Health and 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).

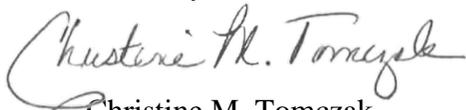
various activities of the Department of Environmental Conservation” was not a reasonably described request for records under POL Article 6. The Committee stated that a response to such a request “would involve making a series of judgments based on opinions, some of which would be subjective, mental impressions”, 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.”

The Determination also informed you that your FOIL request specifically failed to meet the “reasonably describe” requirement in POL § 89(3) because of the very broad nature of the records requested and your use of such expansive phrases such as “any and all,” and “relate to” when applied to excessively broad categories.

I agree with the Determination’s conclusion that your FOIL request does not reasonably describe the records that you seek and your appeal also does not make your FOIL request any clearer. Therefore, I affirm the Determination.

Nevertheless, I conducted a de novo search of the Department’s records and I found that the Department does not possess any records regarding the Goldman Sachs’s investment in the One Million Black Women project.

Sincerely,



Christine M. Tomczak
Assistant Counsel

cc: NYS Committee on Open Government
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