

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HILARY B. MILLER,

Petitioner,

- against -

NEW YORK STATE DEPARTMENT OF FINAN-
CIAL SERVICES and BENJAMIN M.
LAWSKY, in his official capacity
as Superintendent of the New York
State Department of Financial
Services,

Respondents.

For a Judgment Pursuant to Article
78 of the Civil Practice Law and
Rules

Index No. 101118/14

NOTICE OF PETITION

NEW YORK
COUNTY CLERK'S OFFICE

OCT 09 2014

**NOT COMPARED
WITH COPY FILED**

PLEASE TAKE NOTICE that upon the accompanying petition of Hilary B. Miller, verified the 7th day of October, 2014, an application will be made to this Court, at the Motion Submission Part Courtroom (Room 130), New York County Courthouse, 60 Centre Street, New York, New York, on October 28, 2014, at 9:30 in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order and judgment:

(a) directing respondents to provide petitioner with all records responsive to petitioner's June 17, 2014 FOIL requests;

(b) ordering, in the alternative, an in camera review of the responsive records in the event that such review would better inform the Court as to the content and form of

the records requested by petitioner, as well as the need for redactions;

(c) awarding attorneys' fees in favor of petitioner and against respondent in an amount to be determined at the conclusion of this proceeding; and

(d) granting petitioner such other, different and further relief as to this Court may seem just, equitable and proper.

Pursuant to CPLR § 7804(c), any answer and supporting affidavits shall be served and filed at least five days before the return date of this application and any adjourned date.

Dated: New York, New York
October 8, 2014



KENNETH DAVID BURROWS
950 Third Ave, 32nd Floor
New York, New York 10022
(212 980-6922)
kdb@burrowslaw.net

Attorney for Petitioner

To: Daniel S. Alter, Esq.
General Counsel
New York State Department of Financial Services
One State Street
New York, New York 10004

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HILARY B. MILLER,

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NEW YORK STATE DEPARTMENT OF FI-
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Index No.

VERIFIED PETITION

PRELIMINARY STATEMENT

This proceeding is brought pursuant to CPLR Article 78 to compel respondents' compliance with a Freedom of Information Law ("FOIL") request under N.Y. Publ. Off. Law § 84 et seq. It seeks to vindicate the right of the public, of legitimate and licensed consumer lenders and of petitioner to understand the basis on which respondent the New York State Department of Financial Services ("DFS") classifies out-of-state consumer lenders as "illegal" and adds them to a blacklist with whom DFS urges banks not to deal.

Frustrated with its inability to regulate certain out-of-state non-bank lenders directly, on or about August 6, 2013, DFS began a campaign of attempting to foreclose those lenders' access to the U.S. banking system.

The highlight of that campaign is a "database tool" announced by respondents on June 1, 2014, the purpose of which is "to help banks identify and stop illegal, online payday lending in New York" by refusing to provide banking services to the blacklisted lenders.

However – and despite providing the "tool" to any bank on request – respondents refuse to provide the "tool" itself or its algorithm to petitioner so that legitimate lenders may determine if they have been erroneously blacklisted, or so that other lenders may know why they have been placed on the blacklist, or so that the public may know which lenders are currently disfavored and whether they have been properly classified as disfavored.

The requested records are subject to disclosure under FOIL, which imposes a broad disclosure obligation on government agencies that makes all government records, including banking blacklists and the basis for creating them, presumptively open for public inspection.

There is a public interest in knowing how DFS classifies lenders as legitimate or otherwise, and who the blacklisted lenders are. DFS has flatly refused to produce any records in response to petitioner's FOIL request. Since DFS's earliest foray into this area was the publication of a print-based blacklist in August 2013, it is difficult to understand DFS could now have any principled objection to production of the computerized blacklist, as well as to disclosure of the basis on which a lender may be blacklisted.

For the reasons hereinafter set forth, petitioner's application should be granted.

RELIEF SOUGHT

1. Petitioner brings this proceeding pursuant to CPLR Article 78, requesting that this Court compel DFS to provide petitioner with records responsive to petitioner's June 17, 2014 FOIL requests (the "Request") for records pertaining to the "database" and "tool" mentioned in DFS's June 16, 2014 press release.

2. More specifically, the Request consisted of eight specific categories of records relating to the "database" and "tool." In this proceeding, petitioner requests that the Court direct DFS to provide petitioner with records responsive to each of the eight categories contained in the request.

3. Petitioner also requests that the Court award attorneys' fees in favor of petitioner and against respondents in an amount to be determined at the conclusion of this proceeding and that the Court grant petitioner such other, different and further relief as this Court may deem just, equitable and proper.

PARTIES

4. Petitioner Hilary B. Miller is an attorney at law and a member of the bar of this Court. He has long been engaged in ongoing scholarship concerning consumer lending and is the author of several published articles about payday lending and consumer financial services disputes. He is the founder and president of the Payday Loan Bar Association and the author of its internal blog.

5. Respondent DFS is an agency created and existing pursuant to N.Y. Fin. Svcs. Law § 102. It is a public agency subject to the requirements of the Freedom of Information Law, N.Y. Publ. Off. Law § 84 et seq.

6. Respondent Benjamin M. Lawskey is a public officer who is named in his official capacity as Superintendent of DFS. He is designated as the head of DFS pursuant to N.Y. Fin. Svcs. Law § 202.

JURISDICTION AND VENUE

7. This Court has jurisdiction under CPLR §§ 7801 et seq. to review administrative determinations by DFS.

8. Venue lies in New York County pursuant to CPLR §§ 506(b) and 7804(b) because this proceeding is brought within the jurisdiction where respondents made the determinations complained of and where the principal office of DFS and of Superintendent Lawskey is located.

STATEMENT OF FACTS

9. On or about August 6, 2013, DFS announced its campaign against "illegal online payday lending" in an (undated) memorandum sent to 117 banks under its supervision. The memorandum listed 35 "illegal" payday lenders who had been sent contemporaneous cease-and-desist letters from DFS. The memorandum requested that the banks work with DFS to "choke off" access to the banking system for the 35 lenders, as well as to the broader payday lending industry – apparently including, of particular interest to

petitioner, payday lenders who are fully licensed and operate in accordance with applicable state and federal laws. A copy of the memorandum is annexed hereto as Exhibit "A."

10. On June 16, 2014, DFS issued a press release entitled "Governor Cuomo Announces Creation of New DFS Database Tool to Help Banks Identify and Stop Illegal, Online Payday Lending." According to the press release,

DFS built a database of companies that have been subject to actions by DFS based on evidence of illegal payday lending. The database will be a powerful due diligence tool for financial institutions to protect consumers and help ensure that electronic payment and debit networks are not used to transmit or collect on illegal, online payday loans to New Yorkers.

A true copy of the press release is annexed hereto as Exhibit "B."

PROCEDURAL HISTORY

11. In an effort to understand the policies, procedures and scope of DFS's anti-payday-lending campaign – particularly the means by which legitimate, licensed and legally compliant lenders might inadvertently be blacklisted by DFS – petitioner submitted the Request to the Records Access Officer of DFS on June 17, 2014. The Request, as noted above, consisted of eight categories of requested records, including, most importantly: (a) an updated list of blacklisted lenders, and (b) records relating to how lenders were selected for blacklisting. A copy of the Request is annexed hereto as Exhibit "C."

12. DFS acknowledged receipt of the request on June 18, 2014 and estimated that it would take 20 business days to complete its response.

13. When no response had been forthcoming within the 20-business-day time period, petitioner deemed the failure to produce records as a denial of the request and, on August 4, 2014, filed a timely administrative appeal of the denial. A copy of the appeal letter is annexed as Exhibit "D."

14. After petitioner granted a courtesy extension of DFS's time to respond to the appeal, DFS responded to the appeal on August 22, 2014 by denying the request in its entirety. A copy of the denial letter is annexed hereto as Exhibit "E."

15. DFS made no attempt to offer a particularized justification for its denial. Rather, the denial simply listed and repeated a statutory "law enforcement" exemption from FOIL. Stuningly, DFS offered no explanation for why it was permissible for it to "name names" in its public blacklist of August 2013 (Exhibit "A") but should not be required to produce an updated blacklist less than a year later. DFS likewise failed to explain how disclosure of its selection algorithm will prejudice its ongoing law-enforcement efforts.

16. Legitimate lenders and petitioner have a substantial interest in knowing how the decision to blacklist firms is arrived at and whether they are candidates for the blacklist. The public has an interest in knowing whether the algorithm will correctly

select lenders who engage in illegal, unfair, deceptive or abusive practices and not inadvertently select compliant lenders.

17. Article 78 is the appropriate method of review of agency determinations concerning FOIL requests.

18. Petitioner has a clear right under N.Y. Publ. Off. Law § 84 et seq. to the records requested.

19. Respondents have not produced the records sought by petitioner and have failed to invoke properly any exemption under FOIL.

20. Respondents did not meet their burden to provide specific and particularized justification for withholding the requested records from disclosure under FOIL.

21. Petitioner has exhausted his administrative remedies and has no other remedies at law.

22. Petitioner has not made a prior application for the relief requested herein.

RELIEF REQUESTED

WHEREFORE, petitioner respectfully requests that this Court issue an order:

(a) directing respondents to provide petitioner with all records responsive to petitioner's June 17, 2014 FOIL requests;

(b) ordering, in the alternative, an in camera review of the responsive records in the event that such review would better inform the Court as to the content and form of the records requested by petitioner, as well as the need for redactions;

(c) awarding attorneys' fees in favor of petitioner and against respondent in an amount to be determined at the conclusion of this proceeding; and

(d) granting petitioner such other, different and further relief as to this Court may seem just, equitable and proper.

Dated: New York, New York
October 8, 2014



KENNETH DAVID BURROWS
950 Third Ave, 32nd Floor
New York, New York 10022
(212 980-6922)
kdb@burrowslaw.net

Attorney for Petitioner

VERIFICATION

STATE OF MARYLAND)
) s.s.:
COUNTY OF MONTGOMERY)

HILARY B. MILLER, being duly sworn, deposes and says:

I am the petitioner in the above-captioned proceeding. I have reviewed the petition and know the contents to be true to my own knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe it to be true.

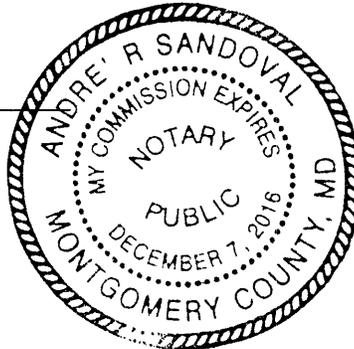


HILARY B. MILLER

Subscribed and sworn to before me
this 7th day of October, 2014:



Notary Public
Andre Sandoval





NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

FROM: Benjamin M. Lawsky, Superintendent of Financial Services
RE: Illegal Online Payday Loans Offered and Sold to New York Customers

We are writing you in connection with the ongoing investigation being conducted by the New York State Department of Financial Services (“DFS” or “Department”) into illegal online payday lending. Payday loans are short-term loans, typically an advance on a future paycheck or other income source. Usurious payday loans are illegal in New York, and such loans are void and unenforceable. Under General Obligations Law § 5-501 and Banking Law § 14-a, loans or forbearances under \$250,000, made by non-bank lenders, with an interest rate exceeding 16 percent per annum, constitute civil usury and are illegal. Further, under New York Penal Law §§ 190.40-42, loans made in New York with an interest rate exceeding 25 percent per annum constitute criminal usury.

The Department has uncovered dozens of out-of-state lenders who have used the Internet to solicit and provide illegal payday loans to consumers in New York. Typically, these lenders charge fees that, when annualized, result in interest rates far in excess of the legal limit. New York consumers who take out these supposedly short-term loans quickly get caught in a vicious cycle of long-term debt; the loans become difficult if not impossible to pay off due to the triple- and quadruple-digit interest rates, together with overdraft fees. To address their unlawful activity, DFS today sent letters to 35 payday lenders directing them to cease and desist offering to lend and lending monies at usurious rates in New York. The lenders include:

- ABJT Funding, LLC d/b/a Dollar Premier
- Advance Me Today
- American Web Loans
- Archer Direct, LLC
- Bayside Loans
- BD PDL Services, LLC d/b/a Bottom Dollar Payday
- Blue Sky Finance, LLC d/b/a ExtraFunds Cash
- BS Financial Group Inc. d/b/a Payday Accelerated
- Cash Jar
- Cash Yes
- Discount Advances
- DMA Financial Corp. d/b/a VIP Q-Loot
- Eastside Lenders, LLC
- Fast Cash Personal Loans
- Golden Valley Lending
- Government Employees Credit Center, Inc. d/b/a Cash Direct Express
- Great Plains Lending, LLC

EXHIBIT "A"

- Horizon Opportunities, LLC d/b/a Lifestyle Services
- Loan Point USA Online
- MNE Services, Inc. d/b/a AmeriLoan, UnitedCashLoans, US Fast Cash, 500 Fast Cash
- MobiLoans, LLC
- MyCashNow.com, Inc.
- National Opportunities Unlimited, Inc. d/b/a Itsmypayday.com, TheCashSpot.com
- Northway Broker Ltd. d/b/a Zip19
- PayDayMax, Ltd.
- Peak 3 Holding, LLC d/b/a iCashLoans
- Plain Green, LLC
- Red Rock Tribal Lending, LLC d/b/a CastlePayday.com
- SCS Processing d/b/a Everest Cash Advance
- SFS, Inc. d/b/a One Click Cash, Preferred Cash Loans
- Sonic Cash
- Sure Advance, LLC
- Tribal Credit Line d/b/a Quick Credit 911
- United Consumer Financial Services, Inc. d/b/a EZPaydayCash
- Western Sky Financial, LLC

DFS will aggressively pursue appropriate enforcement against payday lenders that refuse to cease and desist from their illegal activity in New York.

Illegal payday loans made over the Internet are made possible in New York by credits and debits that must pass through the Automated Clearing House (“ACH”) network. The current ACH network appears to allow illegal loans to flow through New York without sufficient mechanisms to prevent or block these debits or credits as they occur. According to the Operational Bulletin released recently by NACHA, the organization that manages the ACH network, the borrower’s bank, or the Receiving Depository Financial Institution (“RDFI”), “has no basis or information to make an independent judgment as to whether any specific transaction was properly authorized and relates to a bona fide, legal transaction.” ACH Operations Bulletin #2-2013, High-Risk Originators and Questionable Debit Activity, March 14, 2013. The RDFI only becomes aware of the “questionable debit activity when it is contacted by its customer.” *Id.* This is deeply concerning to the Department. The RDFIs would be a great asset in preventing their customers from being victimized by these illegal loans if they were aware of questionable activity before such debits were made. As such, changes to the ACH network may be necessary.

NACHA also places the onus on the banks originating the debits, also known as the Originating Depository Financial Institutions (“ODFIs”), as “gatekeepers of the ACH Network,” to conduct sufficient due diligence consistent with NACHA Operating Rules. The Department is interested in the steps the ODFIs are taking to monitor compliance among the above-listed and any other loan originators who are using the ACH network to violate New York laws.

Access to the ACH system is the foot in the door that online payday lenders need to prey on vulnerable New Yorkers. And banks have proven to be – even if unintentionally – an essential cog in the vicious machinery that these purveyors of predatory loans use to do an end-run around New York law.

We are requesting that you work with us to create a new set of model safeguards and procedures to choke off ACH access to the 35 illegal lenders DFS's investigation has identified to date, as well as the broader payday lending industry. Doing so is not only in the interest of your customers who will be better protected from these predatory loans. It is also in your bank's long-term interest to take appropriate action to help ensure that it is not serving as a pipeline for illegal conduct.

The Department therefore requests that you inform us of the steps that you are taking, in your capacity as either an ODFI, RDFI or both, as applicable, to stop illegal payday loans from entering into New York through the ACH network. We are interested in the steps you are able to take now, and what changes are necessary both within your bank and at the ACH network level to stop these illegal loans.

Through a cooperative effort with the banking industry, we can work together to stamp out these pernicious, illegal payday loans in New York. To further that cooperative undertaking, we request the opportunity to meet with you and your designees with knowledge of the ACH network and NACHA rules and processes. Please contact at your earliest convenience Executive Deputy Superintendent Joy Feigenbaum, Financial Frauds & Consumer Protection, at (212) 480-6082, to set up a mutually convenient time to meet. We look forward to working with you on this important issue.

Recipients of Letter

Bank of America Corp.
Capital One Financial Corporation
Citigroup, Inc.
HSBC North America Holdings, Inc.
J.P. Morgan Chase & Co.
Keycorp
M & T Bank Corporation
PNC Financial Services Group
TD Bank
U.S. Bancorp
Wells Fargo & Company
Alpine Capital Bank
Adirondack Bank
Adirondack Trust Company, The
Alden State Bank
Alma Bank
Amalgamated Bank of NY
Amerasia Bank
American Community Bank
AmeriCU Credit Union
Apple Bank for Savings
Banco Popular de Puerto Rico
Banco Popular North America
Bank Hapoalim B.M.
Bank Leumi Le-Israel B.M.
Bank Leumi USA
Bank of Akron
Bank of Castile, The
Bank of Cattaraugus
Bank of Holland
Bank of Millbrook
Bank of Richmondville
Bank of Utica
Berkshire Bank Municipal Bank
Berkshire Bank, The
Branch 6000 NALC Credit Union
Buffalo Service Credit Union
Catskill Hudson Bank
Cattaraugus County Bank
CFCU Community Credit Union

Spring Bank (formerly CheckSpring)
Chemung Canal Trust Company
Citizens Bank of Cape Vincent
Country Bank
CMS Bank
Cross County Savings Bank
Directors Choice Credit Union
Elmira Savings Bank
Emigrant Bank
Emigrant Mercantile Bank
Empire Branch 36 NALC Credit Union
Empire State Bank
Empire State Credit Union
Encompass Niagara Credit Union
Erie County Employees Credit Union
Fairport Savings Bank
First American International Bank
First Central Savings Bank
Five Star Bank
Flushing Bank
Fulton Savings Bank
Genesee Regional Bank
Global Bank
Gold Coast Bank
Greene County Commercial Bank
Habib American Bank
Hanover Community Bank
Hudson River Community Credit Union
Interaudi Bank
Israel Discount Bank of New York
Jamestown Post Office Employees Credit Union
Jeff Bank
Medina Savings and Loan Association
Melrose Credit Union
Montauk Credit Union
Municipal Credit Union
New York Commercial Bank
New York Community Bank
NewBank
Newspaper Employees Credit Union
Niagara Falls Penn Central Employees Credit Union
Niagara Frontier Federal Employees Credit Union

North Country Savings Bank, The
Norton-Troy Employees Credit Union
Oneida Savings Bank
Orange county Trust Company
Pathfinder Bank
Pathfinder Commercial Bank
PCSB Commercial Bank
Pioneer Commercial Bank
Pioneer Savings Bank
Progressive Credit Union
Provident Municipal Bank
Putnam County Savings Bank
Rhinebeck Bank
Ridgewood Savings Bank
Riverside Bank
Rondout Savings Bank
Savoy Bank
Sawyer Savings Bank
Signature Bank
Solvay Bank
State Bank of Chittenango
Steuben Trust Company
The Dime Savings Bank of Williamsburgh
NorthEast Community Bank
Tioga State Bank
Tompkins Trust Company
Ulster Savings Bank
United International Bank
United Orient Bank
USNY Bank
Victory State Bank
Watertown Savings Bank
Westchester Bank, The
WSB Municipal Bank
Yonkers Postal Employees Credit Union

Contact Information:
Governor's Press Office
NYC Press Office: 212.681.4640
Albany Press Office: 518.474.8418
press.office@exec.ny.gov



Andrew M. Cuomo - Governor

Governor Cuomo Announces Creation of New DFS Database Tool to Help Banks Identify and Stop Illegal, Online Payday Lending

[Printer-friendly version](#)

Bank of America First Financial Institution to Agree to Use Database to Help Prevent Electronic Payment and Debit Networks from Being Exploited for Illegal, Online Payday Lending

Next Step in More than Year-long DFS Investigation to Root out Illegal, Online Payday Lending to New Yorkers

Albany, NY (June 16, 2014)

Governor Andrew M. Cuomo announced today that Bank of America is the first financial institution to agree to use a new Department of Financial Services (DFS)-created tool to help banks identify and stop illegal, online payday lending in New York. DFS built a database of companies that have been subject to actions by DFS based on evidence of illegal payday lending. The database will be a powerful due diligence tool for financial institutions to protect consumers and help ensure that electronic payment and debit networks are not used to transmit or collect on illegal, online payday loans to New Yorkers. Today's announcement is the next in a series of steps DFS has taken during a more than year-long investigation to stop illegal payday lending over the Internet in New York.

"Our administration is continuing to aggressively combat online payday lending – and today we are urging the private sector to join us in protecting New Yorkers from this illegal activity," Governor Cuomo said. "I applaud Bank of America for stepping up as an industry leader in this area and doing the right thing to help safeguard New York's consumers."

Benjamin M. Lawsky, Superintendent of Financial Services, said: "We are pleased that Bank of America set a strong example and partnered with us on this issue. In the coming days and weeks, we will be reaching out to additional banks asking that they join us in this effort. It is vital that we combat these illegal, predatory loans, which trap New Yorkers in destructive cycles of debt."

"We are committed to safe, transparent products and services that help our customers build better money habits," said Andrew Plepler, Global Corporate Social Responsibility and Consumer Policy executive for Bank of America. "This program provides us with another tool to help protect our customers from predatory lending practices throughout New York."

Payday lending is illegal in New York under both civil and criminal usury statutes. In some cases, however, lenders attempt to skirt New York's prohibition on payday lending by offering loans over the Internet – and collecting on them using electronic payment and debit networks – in an effort to avoid prosecution. Nonetheless, Internet payday lending is just as unlawful as payday lending made in person in New York.

Bank of America intends to use the database in several ways that will help stop illegal lending in New York. The database will enhance Bank of America's due diligence and "know your customer" procedures by identifying companies that may be engaged in illegal lending. Bank of America plans to use this information to help confirm that its merchant customers are not using their accounts to make or collect on illegal payday loans to New York consumers. Bank of America also plans to use the database to identify payday lenders that engage in potentially illegal payday loan transactions with its New York consumer account holders, and, when appropriate, contact the lenders' banks to notify them that the transactions may be illegal. Further, Bank of America will provide DFS with information about payday lending activities by lenders listed in the database including identifying lenders that continue to engage in potentially illegal lending activities despite the Department's previous actions.

DFS' efforts to provide banks with information about illegal payday lending activity have already been effective in stopping that activity in and to New York. In fact, since DFS has been providing information to banks and debit networks, many illegal payday lenders who had been lending in New York have stopped.

DFS' database includes companies identified by the Department's ongoing, year-long investigation as having made illegal payday loans over

EXHIBIT "B"

the Internet to New Yorkers. As DFS' investigation proceeds, it will update this database on an ongoing basis.

The Cuomo Administration has taken a series of steps to help stop illegal online payday lending in New York. In February 2013, DFS issued a [warning](#) to debt collectors that loans with interest rates above the statutory maximums are void and unenforceable, and that collecting on such loans is therefore illegal.

In August 2013, DFS sent [cease-and-desist letters](#) to 35 online lenders making usurious loans to New Yorkers, with annual interest rates as high as 1,095 percent. DFS also urged banks and NACHA, which is dedicated to the protection of the electronic payments system, to work with DFS to stop payday lenders from illegally accessing New York customer accounts.

DFS expanded its investigation in December 2013 by issuing subpoenas to 16 online "lead generation" firms suspected of deceptive or misleading marketing of illegal, online payday loans in New York. These firms typically do not make payday loans directly, but instead set up websites that market those loans and collect sensitive personal information from consumers. Lead generators then sell this personal information to illegal online payday lenders and other companies, including scam artists. DFS received complaints against many of these firms including false and misleading advertising, harassing phone calls, solicitations for unrelated products and fraudulent charges for phony financial products.

In January 2014, Superintendent Lawsby also [sent a letter to NACHA](#) and its board of directors noting that while the reforms they proposed following his August 2013 letter represented positive steps, they did not adequately address the abuses of the Automated Clearing House network by payday lenders. The Superintendent urged NACHA to take specific, stronger actions to root out illegal payday lending over the Internet.

In April 2014, MasterCard and Visa agreed with DFS to take a series of steps to help stop this illegal activity over their debit card networks. DFS also sent additional cease-and-desist letters to 20 online lenders making usurious loans to New Yorkers.

Financial institutions wishing to sign up for access to DFS's database tool should contact PaydayDatabase@dfs.ny.gov.

###

Hilary B. Miller

From: Hilary B. Miller
Sent: Tuesday, June 17, 2014 7:54 AM
To: recordsaccessofficer@dfs.ny.gov.readnotify.com
Subject: FOIL Request

Records Access Officer
New York State Department of Financial Services
Office of General Counsel-Banking
One State Street
New York, New York 10004-1511

This is a request pursuant to the New York Freedom of Information Law, Article 6 of the Public Officers Law. It refers to the "database" and "tool" mentioned in DFS's press release of June 16, 2014 with the headline "GOVERNOR CUOMO ANNOUNCES CREATION OF NEW DFS DATABASE TOOL TO HELP BANKS IDENTIFY AND STOP ILLEGAL, ONLINE PAYDAY LENDING."

Please provide the following Department records:

1. The database itself (i.e., the list of illegal lenders and/or other data promulgated by DFS that may be queried using the tool).
2. A working copy of the tool.
3. Documents relating or referring to how lenders were selected for inclusion in the database, including all correspondence and memoranda describing the criteria for inclusion of lenders in the database.
4. All forms, manuals, documentation, flowcharts, source code and other documents relating to the tool.
5. All policies and procedures relating to the database and/or the tool, including procedures for updating the database.
6. All agreements entered into to date with banks and with other third parties relating to the database and/or to the tool.
7. All contracts and orders placed with third parties relating to the development of the tool.
8. Documents identifying employees of DFS who were responsible for development of the tool and/or compilation of the database.

It is respectfully requested that these documents be provided in electronic form via email to this address. To the extent that they are too voluminous to be emailed, we will provide an FTP site to which they can be uploaded. If they cannot reasonably be so provided, kindly provide them in paper form; I understand there is a fee of \$.25 per page for paper duplication of the records requested.

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Sincerely yours,

Hilary B. Miller

Hilary B. Miller • Law offices of Hilary B. Miller • 1629 K Street, N.W. - Suite 300 • Washington, D.C. 20006-1631 • voice: (202) 449-9484 • fax: (914) 206-3727 • hilary@millernet • [bio](#) • [v-card download](#)

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HILARY B. MILLER
ATTORNEY AT LAW

ADMITTED TO PRACTICE IN
NEW YORK, CONNECTICUT,
DISTRICT OF COLUMBIA
AND ENGLAND AND WALES

500 WEST PUTNAM AVENUE — SUITE 400
GREENWICH, CONNECTICUT 06830-6096
(203) 399-1320
FACSIMILE: (914) 206-3727

250 PARK AVENUE — 7TH FLOOR
NEW YORK, NEW YORK 10177-0799
(646) 350-0908

1629 K STREET, N.W. — SUITE 300
WASHINGTON, D.C. 20006-1631
(202) 449-9484

HILARY@MILLER.NET

PLEASE REPLY To:
Connecticut Office

August 4, 2014

FOIL Appeals Officer
New York State Department of Financial Services
One State Street
New York, New York 10004-1511

Re: Appeal of Denial of FOIL Request 14-123

Dear Sir or Madam:

On June 17, 2014, I requested certain records relating to the Department's "database tool to help banks identify and stop illegal, online payday lending." Although the receipt of the request was acknowledged and I was informed that a response would be given within 20 business days following June 18, 2014 (i.e., by July 17, 2014), no response has been given. Consequently, I consider the request to have been denied, and I am appealing on that basis.

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within 10 business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, New York 12231.

Very truly yours,



HILARY B. MILLER

VIA EMAIL AND FIRST-CLASS MAIL

EXHIBIT "D"



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

August 22, 2014

Hilary B. Miller, Esq.
Email: Hilary@miller.net
Re: Freedom of Information Law ("FOIL") Request # 14- 123

Dear Mr. Miller:

I am writing in response to your letter dated August 4, 2014 regarding the above referenced FOIL request, about which you appeal.

Your request was submitted to the New York State Department of Financial Services ("DFS") on June 17, 2014, a copy of which is appended hereto. In the request, you asked to be provided with copies of various records regarding what was referred to in a DFS press release of June 16, 2014, as a database tool to help banks identify and stop illegal payday lending. On June 18, 2014, DFS informed you, in writing, that your request was received, and indicated that a response would be completed within twenty business days from the date of the written acknowledgement. However, prior to receiving DFS's response to your request, you filed this appeal indicating that you had been denied access to the records.

As noted in the June 17th press release, the database is a tool that is being used in connection with an on-going investigation into payday lending, which is illegal in New York under both criminal and civil usury statutes. That being the case, with respect to the records you seek as indicated in numbers 1-6 of your FOIL request, those records are not being provided to you in accordance with the provisions of New York's Public Officers Law § 87(2)(e). Specifically, the records are being compiled for law enforcement purposes, among others, and which, if disclosed would interfere with law enforcement investigations or judicial proceedings. Therefore, DFS is not releasing them to the public.

Daniel S. Alter

General Counsel
New York State Department of Financial Services

Enclosures:



FOIL Request

Hilary B. Miller

to:

recordsaccessofficer@dfs.ny.gov

06/17/2014 07:54 AM

Hide Details

From: "Hilary B. Miller" <hilary@miller.net>

To: "recordsaccessofficer@dfs.ny.gov" <recordsaccessofficer@dfs.ny.gov>,

Please respond to "Hilary B. Miller" <hilary@miller.net>

Security:

To ensure privacy, images from remote sites were prevented from downloading. Show Images

Records Access Officer

New York State Department of Financial Services

Office of General Counsel-Banking

One State Street

New York, New York 10004-1511

This is a request pursuant to the New York Freedom of Information Law, Article 6 of the Public Officers Law. It refers to the "database" and "tool" mentioned in DFS's press release of June 16, 2014 with the headline "GOVERNOR CUOMO ANNOUNCES CREATION OF NEW DFS DATABASE TOOL TO HELP BANKS IDENTIFY AND STOP ILLEGAL, ONLINE PAYDAY LENDING."

Please provide the following Department records:

1. The database itself (i.e., the list of illegal lenders and/or other data promulgated by DFS that may be queried using the tool).
2. A working copy of the tool.
3. Documents relating or referring to how lenders were selected for inclusion in the database, including all correspondence and memoranda describing the criteria for inclusion of lenders in the database.
4. All forms, manuals, documentation, flowcharts, source code and other documents relating to the tool.
5. All policies and procedures relating to the database and/or the tool, including procedures for updating the database.
6. All agreements entered into to date with banks and with other third parties relating to the database and/or to the tool.
7. All contracts and orders placed with third parties relating to the development of the tool.
8. Documents identifying employees of DFS who were responsible for development of the tool and/or compilation of the database.

It is respectfully requested that these documents be provided in electronic form via email to this address. To the extent that they are too voluminous to be emailed, we will provide an FTP site to which they can be uploaded. If they cannot reasonably be so provided, kindly provide them in paper form; I understand there is a fee of \$.25 per page for paper duplication of the records requested.

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Sincerely yours,

Hilary B. Miller

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Press Release

June 16, 2014

Contact: Matt Anderson, 212-709-1691

GOVERNOR CUOMO ANNOUNCES CREATION OF NEW DFS DATABASE TOOL TO HELP BANKS IDENTIFY AND STOP ILLEGAL, ONLINE PAYDAY LENDING***Bank of America First Financial Institution to Agree to Use Database to Help Prevent Electronic Payment and Debit Networks from Being Exploited for Illegal, Online Payday Lending******Next Step in More than Year-long DFS Investigation to Root out Illegal, Online Payday Lending to New Yorkers***

Governor Andrew M. Cuomo announced today that Bank of America is the first financial institution to agree to use a new Department of Financial Services (DFS)-created tool to help banks identify and stop illegal, online payday lending in New York. DFS built a database of companies that have been subject to actions by DFS based on evidence of illegal payday lending. The database will be a powerful due diligence tool for financial institutions to protect consumers and help ensure that electronic payment and debit networks are not used to transmit or collect on illegal, online payday loans to New Yorkers. Today's announcement is the next in a series of steps DFS has taken during a more than year-long investigation to stop illegal payday lending over the Internet in New York.

"Our administration is continuing to aggressively combat online payday lending – and today we are urging the private sector to join us in protecting New Yorkers from this illegal activity," Governor Cuomo said. "I applaud Bank of America for stepping up as an industry leader in this area and doing the right thing to help safeguard New York's consumers."

Benjamin M. Lawsky, Superintendent of Financial Services, said: "We are pleased that Bank of America set a strong example and partnered with us on this issue. In the coming days and weeks, we will be reaching out to additional banks asking that they join us in this effort. It is vital that we combat these illegal, predatory loans, which trap New Yorkers in destructive cycles of debt."

"We are committed to safe, transparent products and services that help our customers build better money habits," said Andrew Plepler, Global Corporate Social Responsibility and Consumer Policy executive for Bank of America. "This program provides us with another tool to help protect our customers from predatory lending practices throughout New York."

Payday lending is illegal in New York under both civil and criminal usury statutes. In some cases, however, lenders attempt to skirt New York's prohibition on payday lending by offering loans over the Internet – and collecting on them using electronic payment and debit networks – in an effort to avoid prosecution. Nonetheless, Internet payday lending is just as unlawful as payday lending made in person in New York.

Bank of America intends to use the database in several ways that will help stop illegal lending in New York. The database will enhance Bank of America's due diligence and "know your customer" procedures by identifying companies that may be engaged in illegal lending. Bank of America plans to use this information to help confirm that its merchant customers are not using their accounts to make or collect on illegal payday loans to New York consumers. Bank of America also plans to use the database to identify payday lenders that engage in potentially illegal payday loan transactions with its New York consumer account holders, and, when appropriate, contact the lenders' banks to notify them that the transactions may be illegal. Further, Bank of America will provide DFS with information about payday lending activities by lenders listed in the database including identifying lenders that continue to engage in potentially illegal lending activities despite the Department's previous actions.

DFS' efforts to provide banks with information about illegal payday lending activity have already been effective in stopping that activity in and to New York. In fact, since DFS has been providing information to banks and debit networks, many illegal payday lenders who had been lending in New York have stopped.

DFS' database includes companies identified by the Department's ongoing, year-long investigation as having made illegal payday loans over the Internet to New Yorkers. As DFS' investigation proceeds, it will update this database on an ongoing basis.

The Cuomo Administration has taken a series of steps to help stop illegal online payday lending in New York. In

February 2013, DFS issued a **warning** to debt collectors that loans with interest rates above the statutory maximums are void and unenforceable, and that collecting on such loans is therefore illegal.

In August 2013, DFS sent **cease-and-desist letters** to 35 online lenders making usurious loans to New Yorkers, with annual interest rates as high as 1,095 percent. DFS also urged banks and NACHA, which is dedicated to the protection of the electronic payments system, to work with DFS to stop payday lenders from illegally accessing New York customer accounts.

DFS expanded its investigation in December 2013 by issuing subpoenas to 16 online "lead generation" firms suspected of deceptive or misleading marketing of illegal, online payday loans in New York. These firms typically do not make payday loans directly, but instead set up websites that market those loans and collect sensitive personal information from consumers. Lead generators then sell this personal information to illegal online payday lenders and other companies, including scam artists. DFS received complaints against many of these firms including false and misleading advertising, harassing phone calls, solicitations for unrelated products and fraudulent charges for phony financial products.

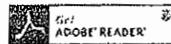
In January 2014, Superintendent Lawskey also sent a **letter to NACHA** and its board of directors noting that while the reforms they proposed following his August 2013 letter represented positive steps, they did not adequately address the abuses of the Automated Clearing House network by payday lenders. The Superintendent urged NACHA to take specific, stronger actions to root out illegal payday lending over the Internet.

In April 2014, MasterCard and Visa agreed with DFS to take a series of steps to help stop this illegal activity over their debit card networks. DFS also sent additional cease-and-desist letters to 20 online lenders making usurious loans to New Yorkers.

Financial institutions wishing to sign up for access to DFS's database tool should contact **PaydayDatabase@dfs.ny.gov**.

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New York State Department of Financial Services

Employees of DFS who were responsible for the development of the [database] tool and/or complication of the database.

Mark Berger

Debra Brookes

Max Dubin

Jared Elost

Joy Feigenbaum

Paul Geoghan

Nathan Harris

David Schorr

Joshua Trudell

Zoe Rasmussen