STATE OF NEW YORK

COMMISSION ON PUBLIC INTEGRITY

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IN THE MATTER OF:

AN INVESTIGATION INTO THE

ALLEGED MISUSE OF RESOURCES OF

THE DIVISION OF STATE POLICE

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ALFRED E. SMITH STATE OFFICE BUILDING
80 SOUTH SWAN STREET
ELEVENTH FLOOR, SUITE 1147
ALBANY, NY 12210-8004

Held on Thursday, October 18, 2007
at 10:00 a.m.

STENOGRAPHIC RECORD of an Investigative Interview under
oath pursuant to notice

INTERVIEWEE: MARIYA S. TREISMAN, ESQ.
Assistant Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

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A-P-P-E-A-R-A-N-C-E-S:

FOR THE COMMISSION:

HERBERT TEITELBAUM, Executive Director
Commission on Public Integrity
540 Broadway, Albany, NY  12207

JOAN P. SULLIVAN, Associate Counsel
Commission on Public Integrity
540 Broadway, Albany, NY  12207

MAEVE M. TOOHER, Investigative Counsel
Commission on Public Integrity
540 Broadway, Albany, NY  12207

ROBERT J. SHEA, Associate Confidential Inv.
Commission on Public Integrity
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FOR THE INTERVIEWEE:

KIRKLAND & ELLIS
Citigroup Center
153 East 53rd Street
New York, NY  10022

BY: ZACHARY S. BREZ, ESQ.

REPORTED BY: Suzanne T. Harrington, Court Stenographer
and Notary Public

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MARIYA TREISMAN, Having been first duly sworn by the Notary Public, was examined and testified as follows:

BY MS. SULLIVAN:

Q Ms. Treisman, could you state your name for the record?
A Mariya Seacrest Treisman.

Q Would you spell that?

Q Treisman, T-r-e-i-s-m-a-n.
A Yes.

Q And are you accompanied by Counsel?
A Yes.

MS. SULLIVAN: And could you state your name for the record?

MR. BREZ: Sure. My name is Zachary Brez, Z-a-c-h-a-r-y. Last name Brez, B like in boy, R, E, Z like in Zebra. I'm with Kirkland and Ellis in New York, and I represent Ms. Treisman.

Q Ms. Treisman, where are you employed?
A In the Governor's Office, also known as the Executive Chamber.

Q And how long have you been employed there?
Q  And what is your position?
A  Assistant Counsel to the Governor.
Q  And can you tell us what your primary responsibilities are as Assistant Counsel to the Governor?
A  I, um -- Counsels' Office is divided among several attorneys. And each of us is responsible for different policy areas and, specifically, for the different agencies.

I am responsible for the State Education Department, the Judiciary and the Elections, State Board of Elections, and other elections issues.

In addition, I'm also the FOIL Officer for the Executive Chamber.

Q  And as the FOIL Officer for the Executive Chamber, could you tell us what your responsibilities entail?
A  When a FOIL request is submitted to me, I review the request. I ask members of the Executive Chamber for any documents that might be responsive to the request.

I gather the documents, review them, and respond to the request pursuant to the Public Officers Law and the regulations that govern the Executive Chamber.

Q  And who do you report to?
A  At Counsels' Office we have a First Assistant Counsel to the Governor, Terryl Brown Clemons.
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1 T-e-r-r-y-l. Brown, B-r-o-w-n. Clemons, C-l-e-m-o-n-s.
2 And David Nocenti, Nocenti is N-o-c-e-n-t-i, who is
3 Counsel to the Governor.
4    Q    And have you had any prior FOIL experience?
5    A    No.
6    Q    Could you tell us what your prior positions were
7 before the Governor's office?
8    A    I was an Assistant Solicitor General at the
9 Attorney General's Office.
10    Q    And aside from Ms. Clemons and Mr. Nocenti, are
11 there any other attorneys within the Executive Chamber
12 that have FOIL responsibilities?
13    A    No.
14    Q    So it's just the three?
15    A    Yes.
16    Q    Could you explain to us the FOIL procedure
17 within the Executive Chamber? Take us through the process
18 when you get a request, what happens?
19    A    I think I can say what I said before, without
20 getting into any privileged areas, which is that I receive
21 a request and I gather documents from people in the
22 Chamber who might have them.
23    Q    Can I stop you?
24    A    Sure.
25    Q    When you receive the request --
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Q    Do you acknowledge the request?
A    I -- I acknowledge the request pursuant to the
     requirements of the Public Officers Law.
Q    And how do you do that, by phone call or by
     letter, by e-mail?
A    I believe the FOIL, as the Public Officers Law
     stated, it needs to be in writing. So we respond by
     writing.
Q    And is there a time period in which you need to
     respond to that?
A    I believe this is all in the Public Officers
     Law, and I -- I hesitate to cite the law without looking
     at it, but I can tell you that I, you know, follow the
     time periods that are set forth in the statute.
Q    Aside from the Public Officers Law, does the
     Executive Chamber have any written policy?
A    There are published regulations in the
     N.Y.C.R.R.
Q    And could you tell us typically who you receive
     FOIL requests from?
A    No, I don't think there's a typical.
Q    Typical?
A    (Witness nodded head.)
Q    Do you receive requests from reporters?
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1 A I have received requests from reporters.
2 Q How, as the FOIL Officer, do you keep track of FOIL requests?
3 A I'm hesitating only because it's an impersonal process and, umm --
4 Q Is a case number opened if you get a FOIL?
5 A We start a file for every FOIL request.
6 Q Could you explain that a little further?
7 A I'm not sure I know what you're looking for.
8 Q You open a file?
9 A Correct.
10 Q And then you keep the correspondence in the file. And is there some sort of a procedure that would notify you that it would -- that the time is running that you would have to answer the FOIL by?
11 A Yes, I guess, is the answer.
12 Q Yes?
13 A There is a record keeping procedure that we have in place.
14 Q How?
15 A To track when the FOIL requests come in and --
16 Q Who?
17 A And when I need to --
18 Q Who does that?
19 A I do it, and I ask my assistant for help with

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that.

Q Who is your assistant?
A Jeanne, J-e-a-n-n-e. Engwer, E-n-g-w-e-r.

Q Could you approximate how many FOIL requests you have received since you started in January?
A I have -- I hesitate to approximate that. I don't know the exact number.

MR. TEITELBAUM: Was it more than a hundred?
THE WITNESS: I don't think so, but I'm not sure.

MR. TEITELBAUM: Between 50 and 100?
THE WITNESS: Again, I don't know the exact number.

MR. TEITELBAUM: I'm not asking for the exact number. I'm asking for an approximation.
THE WITNESS: And again, I hesitate to approximate.

MR. TEITELBAUM: I understand that, but I'm asking for --

MR. BREZ: If you have a guess.

MR. TEITELBAUM: I'm not asking for a guess. Just an approximation.

THE WITNESS: Probably between 50 and 100, but again, it's a guess.

Q If a citizen or a reporter wants to request

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documents, who would the request be directed to?

A    I -- if -- I think the question is a little unclear. If a citizen or a reporter wants to request documents --

Q    Of the chamber. Would -- would somebody within the Chamber direct that request to your attention?

A    They might.

MR. BREZ: I guess I'm not sure what -- any request for documents?

Q    Well, if the -- if a citizen wanted information from Chamber documents, from the Chamber. And they called the Chamber or e-mailed the Chamber, would that request be forwarded to your attention?

MR. BREZ: Just, I think what she's struggling with, any request for documents or a FOIL request for documents?

MS. SULLIVAN: A FOIL request.

MR. BREZ: Okay. I think that was some of the confusion.

THE WITNESS: Thank you. I can't say what other people in the Chamber might do. I can only say that when a FOIL request comes to me, whether it's directly from a citizen or forwarded to me from someone in the Executive Chamber, that I then am responsible for responding to it.

Q    Is it the procedure within the Chamber that if a
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FOIL request comes in, it is handled by you?

A       That is the standard procedure, yes.

Q       Okay. If someone else within -- another member
        of the Chamber were to receive a FOIL request, would they
        forward it to you?

A       Again, I can't say what they would do, but
        standard procedure would be that the FOIL request -- they
        certainly could forward it to me.

Q       Are they obligated to forward it to you?

A       That seems like it could be a legal conclusion
        of some sort. Do you mean, do we have -- I don't know
        what you mean by obligated.

Q       I guess I'm trying to figure out what the
        protocol is. If a FOIL request comes into the Chamber,
        how is it directed to the FOIL Officer?

A       There is -- many FOIL requests come directly to
        me as the Records Access Officer for the Chamber. And
        sometimes people will send FOIL requests to someone else
        in the Chamber and they will forward them to me.

Q       You mentioned that FOIL requests are required to
        be in writing; is that correct?

A       I'm not sure if I said that or not.

Q       You said the Public Officers Law requires FOIL
        requests to be in writing?

A       I -- again, I don't remember saying that.
MR. BREZ: I don't either, actually, but --

Q    Do FOIL requests have to be in writing?

A    Again, I don't have the Public Officers Law in

front of me, so I don't want to, um -- I don't want to

guess about what the law says.

MR. TEITELBAUM: What's your understanding?

THE WITNESS: My understanding is that the law
does not require a FOIL request to be in writing.

Q    Do you accept oral requests?

A    I do not.

Q    You do not?

A    It's not my --

MS. TOOHER: What do you do when you get a FOIL
request?

THE WITNESS: Can I correct that? It's not my
normal practice to accept a FOIL request, an oral FOIL
request.

Q    So if somebody called you and asked you for a
document, you -- would you require them to put it in
writing?

A    It depends. For example -- I'm sorry. If

someone calls me and says, I'm making a request under the
Freedom of Information Law, I'll ask them to put that in
writing.

MS. TOOHER: What if someone else in the
Executive Chamber indicated they had received an oral request?

THE WITNESS: An oral FOIL request?

MS. TOOHER: Oral FOIL request, yes.

THE WITNESS: I would ask them to ask that person to put it in writing or have them contact me, and I would do the same.

Q Could you explain what the FOIL law requires in terms of disclosure? Like, what do you look at when you're deciding whether a request should be accepted or denied? What are the standards?

A The standards are those that are set forth in the law with respect to what I look at. When I'm deciding, I believe that's privileged.

Q Are there any other standards in --

MR. TEITELBAUM: Before you go over to that, Counsel -- I would ask Counsel to explain to us the nature of the privilege that's being asserted.

MR. BREZ: Great. As we went over, Ms. Treisman is an attorney in the office. And one of her jobs as an attorney is to be the FOIL Officer, to interpret what is called for by a request, and what is the floor of what must be provided.

And I think it's Ms. Treisman's view, and it's an accurate one, that in making that decision about
reading the statute, comparing it to the request, piecing
the two of them together and deciding what the floor
provides pursuant to a statute, that's a legal statute.
She is acting as an attorney and there is some
combination of attorney work product. And depending on
the communication she has with her client, the Executive
Chamber, attorney client communication.
And so I think the mental process that she goes
through of deciding what's responsive and what isn't under
the FOIL law with a particular request she gets, touches
on both attorney work product and attorney client
communications.
Please note that we're stepping outside. I
assume we're going to go off the record.
(Discussion off the record.)
MR. BREZ: While we were off the record,
Mr. Teitelbaum and I had a conversation about the nature
of the attorney work product and the attorney client
issues that we were raising.
I think we came to some general understanding
we're going to walk through these questions slowly.
MR. TEITELBAUM: One at a time.
MR. BREZ: One at a time. And Ms. Treisman is
going to be as helpful as possible. And I see you have
the statute in front of you, which is one of the things I
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1 requested, so thank you very much.
2 Q Thank you. Ms. Treisman, I think we were
talking about when you received a FOIL request, if you
could help us understand what are the standards that you
look at in determining what documents will be released
pursuant to that request?
3 A I look at the statute and the regulations,
again, that the Executive Chamber has promulgated. And
based on the standard and the exemptions in the statute, I
make a decision about both what's responsive to the
request and what might be exempt under the statute.
4 Q And you're referring to Section 87 of the Public
Officers Law?
5 A That sounds right, but I don't have it in front
of me, so --
6 Q I would like to show it to you.
7 A That would be great.
8 Q If you could take a look at that and point out
what are the exemptions that you would look at in
determining what documents would be disclosed?

MR. BREZ: And make sure you read the section --
just for the record, I want to note that they've placed in
front of Ms. Treisman, a section -- a book open to Section
87 of the Freedom of --

THE WITNESS: Public Officers Law.

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MR. BREZ: -- Information Law.

THE WITNESS: Public Officers Law.

MR. BREZ: Correct, thanks.

(Whereupon the witness reviewed the Public Officers Law.)

(Mr. Brez was handed a copy for his review.)

MR. BREZ: Thank you very much. This is the same?

MS. SULLIVAN: It is the same.

MR. TEITELBAUM: Off the record.

(Discussion off the record.)

THE WITNESS: Before I answer the question, I just also would note that there's a pocket part to the statute book. I don't believe there have been any amendments to that section, but I'm just going to turn to that, if that's okay?

MS. TOOHER: Sure.

(Whereupon the witness continued to review the Section.)

THE WITNESS: Okay. I'm sorry, could you repeat the question?

MS. SULLIVAN: Could you read it back?

(The question was read back.)

THE WITNESS: "Section 87, Subdivision (2)
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states that each agency shall, in accordance with its
published rules, make available for public inspection and
copying all records, except that such agency may deny
access to records or portions thereof that -- and then
that subdivision goes on to list a number of exemptions
for which an agency may deny access to records.

Q Could you state for the record the exemptions
that are listed there, A through E?

A Sure.

MR. BREZ: Just -- I think it goes beyond E.

THE WITNESS: True.

MR. BREZ: I just wanted to clarify, I think it
goes to -- J has not yet been repealed, so it goes to J.

Q Well, I'll call your attention to Subsection
(b). Could you state on the record what that section
says?

A Sure. Section 87(2)(b) states that, "An agency
may deny access to records or portions thereof, that if
disclosed would constitute an unwarranted invasion of
personal privacy, under the provisions of Subdivision 2 of
Section 89 of this Article."

Q So that would be one example of a document which
would not be disclosed?

A Or a portion of a document, correct.

Q And how would you make that determination?
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Would you confer with Counsel?

A  I believe that how I would make that
determination may get into my work product. I am Counsel,
so it might be an internal determination. I could confer
with others, if necessary, based on the circumstances.

MR. TEITELBAUM: Do you confer with others in
making determinations about what to redact?

THE WITNESS: In some instances, yes.

MR. TEITELBAUM: And who are the people with
whom you conferred?

THE WITNESS: It depends on the circumstances.

At this -- in a typical situation, it might be the person
who had control of the document. And it might also be
Terryl Brown Clemons in our office.

And on some occasions David Nocenti in our
office. There may be others. If -- if a document is
related to a particular subject matter area and there is
another Counsel in our office who's responsible for that
subject matter, I may confer with them as well.

MR. TEITELBAUM: And with respect to the
circumstance where you would be conferring with somebody
who has control of the document, can you tell us what you
mean by control of the document?

THE WITNESS: The person who's provided the
document to me from their records. That is who normally
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1 maintains the document and has given it to me.
2 MR. TEITELBAUM: So if there were a FOIL request
3 that came to you seeking documents from the files of the
4 State Police, is it your testimony that you would confer
5 with somebody at the State Police?
6 THE WITNESS: No, that's not what my testimony
7 is.
8 MR. TEITELBAUM: Okay.
9 THE WITNESS: I'm talking about people within
10 the Executive Chamber. And those are the only people from
11 whom I gather records in response to FOIL requests in the
12 standard operating procedures.
13 So I would confer with the individual who had
14 that document and who provided it to me when I solicited
15 documents that might be responsive to the FOIL request.
16 MR. TEITELBAUM: And what do you do in the
17 circumstances where, if you get a FOIL request and the
18 Executive Chamber does not have the documents, but the
19 documents are in another agency?
20 THE WITNESS: My standard response is that the
21 Executive Chamber does not possess or maintain those
22 documents, and therefore does not have anything that would
23 be responsive to the request.
24 MR. TEITELBAUM: And has that been your standard
25 procedure from the point in time that you first joined the
Executive Chamber and became the FOIL Officer?

THE WITNESS: Yes.

MR. TEITELBAUM: And is that standard something that you yourself came up with, or was it communicated to you by somebody?

THE WITNESS: It -- it was something that was discussed within the Executive Chamber.

MR. TEITELBAUM: Pretty much early on, around the time that you joined the Executive Chamber?

THE WITNESS: Yes.

MR. TEITELBAUM: And who partook in that discussion, if you recall?

THE WITNESS: I don't know that I recall everyone that partook in that discussion.

MR. TEITELBAUM: Do the best you can.

THE WITNESS: I believe that it was myself. Terryl Brown Clemons who, I don't know if I mentioned this before, but is the Appeals Officer, the FOIL Appeals Officer.

And that's why I'm often consulting with her with respect to FOIL matters.

And David Nocenti may have been involved in that conversation. I don't recall specifically if he was or not.

MR. TEITELBAUM: Was the procedure reduced to...
writing? And when I say writing, I mean e-mails or hard
copy?

MR. BREZ: And just to make sure, the procedure
of her not responding --

MR. TEITELBAUM: Correct.

MR. BREZ: -- to FOIL requests for documents at
other agencies?

MR. TEITELBAUM: Precisely.

THE WITNESS: I don't recall that it was ever
put in writing.

MR. TEITELBAUM: Is it -- do you have knowledge
as to whether persons, other than yourself in the
Executive Chamber, knew about that procedure? The
procedure that your Counsel just articulated?

MR. BREZ: Do you understand what he's saying?

THE WITNESS: I think so, although I don't
remember what he just articulated.

MR. TEITELBAUM: In other words -- in other
words, that if the documents are in another agency, you
just say listen, we don't have them?

MR. BREZ: A FOIL request?

MR. TEITELBAUM: Yeah.

MR. BREZ: Yeah.

THE WITNESS: I don't know if others in the
Executive Chamber knew about that or not.
MR. TEITELBAUM: Well, would Terryl Brown Clemons know?

THE WITNESS: I believe so.

MR. TEITELBAUM: And David Nocenti?

THE WITNESS: I believe so.

MR. TEITELBAUM: How about Peter Pope, would you know this -- do you know?

THE WITNESS: I don't know.

MR. TEITELBAUM: Richard Rifkin?

THE WITNESS: I don't know.

MR. TEITELBAUM: Have you confronted a circumstance described by your Counsel, you're asked for a document, it's in another agency --

THE WITNESS: Yes.

MR. TEITELBAUM: And is there a typical letter that you then send out under those circumstances to the requester?

THE WITNESS: Yes.

MR. TEITELBAUM: What does the letter say, as best you can recall it?

THE WITNESS: Fair enough, since I don't have the language in front of me. I don't know that this is the specific language.

But as I said before, my responsibility would be that the Executive Chamber does not possess or maintain a
record that would be responsive to this request.

I might -- it depends very much on the circumstances. If a request asks for documents from a specific agency, I might note in my response that the individual has asked for documents from a specific agency, and then go on to say that the Executive Chamber does not possess or maintain documents that are responsive.

MR. TEITELBAUM: And when a FOIL request is received by the media people in the -- when a FOIL request is received by the people in the -- and I don't know the name of the office that they -- the communications office, is that it?

THE WITNESS: Press office, Communications office.

MR. TEITELBAUM: The office that Dopp headed up, what was that called?

THE WITNESS: My understanding is that his actual title was Communications Director. I believe the office is the Press Office.

MR. TEITELBAUM: Let's call it the Press Office.

THE WITNESS: Okay, fair enough.

MR. TEITELBAUM: When a FOIL request is received by the Press Office, as far as you know, are they supposed to send that FOIL request over to you for review?

THE WITNESS: If they have -- I'm hesitating
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because I think the question presumes a couple of things.

MR. TEITELBAUM: Tell me what I'm presuming that
you have questions about.

THE WITNESS: My -- I believe or I understand
that the Press Office receives a number of requests for
information, could be for documents, I'm sure on a daily
basis.

And my understanding is that they probably
respond to a lot of those requests, and that's indeed
their job to do so.

If they receive a Freedom of Information Law
request they, I believe, typically forward it to me.

MR. TEITELBAUM: That's what they're supposed to
do when they receive a FOIL request, as far as your
understanding?

THE WITNESS: I believe that that's what they
do. The way you're saying that that's what they're
supposed to do, I'm not --

MR. TEITELBAUM: Correct. I'm drawing a
distinction between what they do and your understanding
is, as to whether they're supposed to do it under the
protocol of the Executive Chamber.

THE WITNESS: I do not know if anybody has ever
said to them, here is what you are supposed to do.

MR. TEITELBAUM: What's your understanding of

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what they're supposed to do when they get a FOIL request?

THE WITNESS: I guess I would like -- I would like maybe to back up just a little bit.

MR. TEITELBAUM: Sure.

THE WITNESS: Which is, when you say a FOIL request, what do you mean by that?

MR. TEITELBAUM: A request pursuant to the FOIL statute.

THE WITNESS: Meaning that whatever the written -- do you mean a written request?

MR. TEITELBAUM: If there are such things as oral FOIL requests, we can take them both ways. Is there a difference in how an oral FOIL request is handled?

MR. BREZ: I think what she's struggling with is just, if in the request somebody says, I'm requesting this pursuant to FOIL, or are they just saying, I want X. So that way she can answer both ways.

THE WITNESS: Right.

MR. TEITELBAUM: What indicates to you that a request is being made pursuant to FOIL?

THE WITNESS: If it's a request in writing generally and citing the Freedom of Information Law. Some individuals, you know, may say Freedom of Information Act, which is the federal law. I would accept that as a FOIL request as well. I'm not so rigid as to
require precisely stating the statute.

But it is a formal written request under the Freedom of Information Law.

MR. TEITELBAUM: Okay. So given your understanding of what a request is that's pursuant to the Freedom of Information Law, now I want to know what is your understanding of what the Press Office is supposed to do when it gets a FOIL request?

THE WITNESS: My understanding is that anyone in the Executive Chamber, whether it's the Press Office or another office, should forward a FOIL request, as I have described it, to me.

MS. TOOHER: Is there any distinction in the way you treat FOIL requests from the Press Office versus from the public?

THE WITNESS: No.

MS. TOOHER: And is there any distinction in the way a FOIL request from a reporter was treated versus any other member of the public?

THE WITNESS: No, not by me.

MS. TOOHER: Are you aware of --

THE WITNESS: And I only -- I should say I'm not aware that it's treated differently by anyone else, but I can only speak on behalf of what I do.

MR. TEITELBAUM: Your understanding is that it's
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1   not supposed to?

2   THE WITNESS: My -- I -- yes. I mean, I believe

3   the Freedom of Information Law does not make any

4   distinction based on who is --

5   MR. TEITELBAUM: Requesting?

6   THE WITNESS: -- Requesting the documents,

7   correct.

8   Q I'm showing you what has been marked as

9   Commission's Exhibit 66. Could you take a moment and look

10  at that document. Can you identify this?

11  (Whereupon the witness was handed Exhibit

12    66 to review.)

13   A When you say can I identify it, does that mean

14   you just want me to describe it for the record?

15   Q Yes.

16   A This appears to be a hard copy of an e-mail from

17   Jim Odato to Darren Dopp dated June 27, 2007. The subject

18   line is FOIL request.

19   Q Have you seen this document before?

20   A Yes.

21   Q Could you tell us when?

22   MR. BREZ: And I'm just going to interject. I

23   think she's probably only asking for non-privileged times

24   that you've seen this document.

25   You've seen it with me, I'm pretty sure she's
not asking about that. You can correct me, but you're interested in times outside of with Counsel that she's reviewed this document, is that --

MS. SULLIVAN: Yes.

MR. BREZ: Okay.

A I think the response to that might call for attorney client privileged communications. Can I consult with my attorney?

MR. TEITELBAUM: Sure.

MR. BREZ: Thank you. We'll just step outside please.

(Discussion off the record.)

MR. TEITELBAUM: Do you remember the question?

THE WITNESS: Could you repeat the question?

(The question was read back.)

THE WITNESS: I think the question was, when did I see this document? I'm going to start by saying when I did not see this document.

Which was, I do not recall seeing this document, sort of contemporaneously with the date on the document, that is at or around June 27th.

And since that time, I have only seen this document in privileged contexts.

Q So is it fair to say that Mr. Dopp did not forward Commission's 66 to you on or about the time of the
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e-mail was sent, June 27th?

MR. TEITELBAUM: Did Mr. Dopp ever show you this document?

THE WITNESS: I think responding to that may get into attorney client privileged communication.

MR. TEITELBAUM: Mr. Brez, you're asserting privilege as to whether Dopp showed the witness the document?

MR. BREZ: I think you can probably give the part of your answer that you gave before, which is neither he nor anyone else has shown this to you at a non-privileged setting?

THE WITNESS: Correct.

MR. BREZ: Anytime around the time that it was sent.

MR. TEITELBAUM: Can either one of you explain to us what you mean by a privileged setting?

MR. BREZ: Sure. Maybe I can, because I use that term.

MR. TEITELBAUM: Sure.

MR. BREZ: I can describe it -- I think there's a few ways, a few instances that privileged setting comes up in connection with this document.

One is in connection with me appearing for

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today. Second is --

MR. TEITELBAUM: Just let me stop you on each.

MR. BREZ: Yes.

MR. TEITELBAUM: You mean, you deem it privileged -- you deem it privileged if we solicit whether this witness reviewed any documents in preparation for this testimony and what documents she reviewed? You think that's privileged information?

MR. BREZ: Well, it depends on how you ask the question.

MR. TEITELBAUM: How about the way I asked it?

MR. BREZ: Then it's privileged. If you ask it -- just for the record, I think there's a telephone ringing.

(Brief pause)

MR. BREZ: So on that point, if a witness and an attorney review documents in preparation for testimony, their review of those documents is privileged, except to the extent that that document refreshed the witness' recollection of the events.

If that's the question that was asked and the answer is yes, then the document that refreshes someone's recollection, the identification of documents that refresh someone's recollection, is not privileged.

Outside of that context, documents that are
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reviewed in connection with preparation for testimony are
the identification, and listing of those documents is a
privileged occurrence.

So that's one of the privileged settings we get
into. The second is that as part of Ms. Treisman's duties
as a FOIL Officer, she has conversations with Executive
Office folks when she gets a FOIL request about things
that may or may not be responsive to that FOIL request.

Documents that are responsive are obviously not
privileged. In connection with that conversation, in
deciding what is and is not going to be responsive, it may
be that other documents are reviewed.

And the review of those documents in connection
with the decision of about what to produce, I think, is a
privileged communication.

The privilege of which resides with the
Executive Chamber and not Ms. Treisman. And I have
been -- let me put this on the record.

I have been instructed by Counsel for the
Executive Chamber that the contents of communications that
Ms. Treisman has with Executive Office individuals about
how to respond to FOIL requests, particularly the ones
that are at issue here, are privileged.

And they are not allowing Ms. Treisman to waive
that privilege here.

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MR. TEITELBAUM: Who is the attorney who gave you those instructions?

MR. BREZ: I've had those conversations with more than one attorney, but the two principal attorneys I've had those conversations with are David Nocenti, whose name has come up already. And Peter Pope, whose name you raised earlier.

I'm trying to remember if there were others, but certainly those two.

MR. TEITELBAUM: Are you asserting the second prong of the privilege with respect to the question as to when the witness first saw 66?

THE WITNESS: Could I -- could I interrupt for one second?

MR. BREZ: It's your testimony, certainly.

THE WITNESS: I think there's a third potential area of privilege, which is any involvement that I've had in connection with any of the investigations related to -- related to --

MR. BREZ: The testimony.

THE WITNESS: This testimony.

MR. BREZ: That's one of the things -- that's the third category I was going to come to.

MR. TEITELBAUM: When you say, Ms. Treisman, when you say any involvement, I'm taking that literally.
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You mean any involvement that you've had in an investigation is protected by attorney client privilege?

MR. BREZ: Maybe I can speak to that. That was the third category I was going to come to, listing out privileged settings. I should have done them in reverse chron or whatever.

But the third category is that there have been instances where Ms. Treisman, as a lawyer, had -- for the Executive Office, has been acting as an attorney in the -- in responding to the investigations that stemmed from largely Commission's 66 and the issues surrounding it, by both your office and other offices.

And certainly not every communication she had or everything she's done, but there have been instances where she's been involved in conversations, as a lawyer to the Executive Chamber, about responding to their investigations, of which yours is one.

MR. TEITELBAUM: Has Ms. Treisman been designated as a special counsel?

MR. BREZ: She has not.

MR. TEITELBAUM: So are you asserting a privilege as to -- as to the question of when Ms. Treisman first saw 66.

MR. BREZ: So let's go back to that. If you want to ask the date --
MR. TEITELBAUM: That's all I'm asking. That's what when means, when.

MR. BREZ: Okay. Well --

MR. TEITELBAUM: We'll take it one at a time.

When -- when did you first see?

MR. BREZ: Well, when could also mean what was the setting when you saw it?

MR. TEITELBAUM: When I say when, I mean when.

MR. BREZ: What date, fine. Can we -- let's step off the record for a second.

MS. SULLIVAN: Sure.

MR. BREZ: I don't know the answer. Let me talk to Ms. Treisman.

(Discussion off the record.)

MR. BREZ: Back on the record. I think the question was, when did you see this?

THE WITNESS: When did I see this document?

MR. TEITELBAUM: For the first time?

THE WITNESS: For the first time.

MR. TEITELBAUM: Yes.

THE WITNESS: As far as I recall, the first time that I saw this document was sometime in, I would say early to mid-July, certainly more than a week after the date of this document, which is June 27th, 2007.

And it was in a privileged -- in connection with
attorney client privileged communication.

MR. TEITELBAUM: Because it was a privileged context, is that what you're saying?

THE WITNESS: I was trying not to use that phrase, because it seemed that that was causing some confusion, so --

MR. TEITELBAUM: Describe the context in which you were shown it?

THE WITNESS: It was in connection with determining how to respond to subsequent -- I would say subsequent to June 27th FOIL requests.

MR. TEITELBAUM: Who showed it to you?

THE WITNESS: Um -- is that --

MR. BREZ: You can answer that. Yes, if you remember.

THE WITNESS: If I remember correctly, the first person that showed it to me was Darren Dopp.

MR. TEITELBAUM: Was anybody with Mr. Dopp when he showed it to you?

THE WITNESS: As far as -- if the first time that I saw this was the incident that I'm remembering?

No, no one was with Mr. Dopp.

MR. TEITELBAUM: And your testimony is that the context of that was in connection with a response to a FOIL request?
THE WITNESS: Correct.

MR. BREZ: I think her testimony was not this (indicated).

MR. TEITELBAUM: Not the FOIL.

THE WITNESS: Subsequent FOIL requests.

MR. BREZ: The subsequent --

THE WITNESS: Correct.

MR. TEITELBAUM: Not the FOIL request that's embodied in 66?

MR. BREZ: Correct.

THE WITNESS: Correct.

MR. TEITELBAUM: We're talking about the July 10th FOIL request, correct?

THE WITNESS: I don't know which FOIL request you're referring to.

MR. TEITELBAUM: This second Odato FOIL request.

MS. SULLIVAN: Let me show you Commission's 88.

(Whereupon the witness was handed Exhibit 88 to review.)

MR. TEITELBAUM: Off the record.

(Discussion off the record.)

MR. TEITELBAUM: So was it in connection with 88?

THE WITNESS: I believe -- and I don't know if you have these records, but I believe there may have also
been other FOIL requests for travel related documents. I don't recall if those requests were before July 10th, which is the date on Exhibit 88 or after.

MR. TEITELBAUM: But to your recollection, were they Odato requests?

THE WITNESS: No. To my recollection there were only two Odato requests. These would have been from other individuals.

MS. SULLIVAN: If it would help you, I have the other FOIL requests. And I'm going to mark them as an exhibit and show them to you.

THE WITNESS: Sure.

MR. BREZ: Great.

(The above-described documents were collectively marked for identification as Commission's Exhibit 112, this date.)

Q Ms. Treisman, I'm showing you Exhibit 112, which is a compilation of FOIL requests.

MR. SHEA: No, those are all the same.

MR. BREZ: Let's go off the record for a second.

(Discussion off the record.)

MR. BREZ: We're back on the record.

THE WITNESS: Okay. What was the question?

MS. SULLIVAN: I don't think there was one.

Q Are those the FOIL requests that you were just
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1 mentioning?
2 A Yes. These are four FOIL requests with
3 different dates on or around early July, requesting
4 various types of documents related to either the
5 Governor's travel or other senior state officials travel.
6 Q And when you met with Mr. Dopp, did you meet
7 with him to discuss those documents?
8 MR. BREZ: Just what they were talking about,
9 the meeting she was referring to.
10 THE WITNESS: Earlier.
12 MS. SULLIVAN: Yes.
13 A When I -- I said earlier that I first -- I
14 remember first seeing Exhibit number 66 in connection with
15 responding to other FOIL requests.
16 Yes, I believe it was in connection with
17 responding to one or all of these requests. I don't
18 remember which specific one.
19 Q In addition to Commission's 88?
20 A Correct. Exhibit 88 is dated July 10th. Each
21 of these requests are earlier than July 10th.
22 Q Can I bring you back to Commission's 66, the
23 first FOIL request? It -- Mr. Odato is seeking the
24 material for calendar year 2007 and the date of his
25 request is June 27th.

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Could you tell us what period of time the
records are being sought for in this request?

A As I read the request, it's calendar year 2007
up to the date of the request.

Q So that would include documents from January
1st, 2007 until June 27, 2007?

A Just looking at the request, that's how I would
read it. If I had received this request and were
responding to it and needed clarification, I would
probably contact the person making the request.

That is, sometimes it's hard to tell from
the request itself, the period of time that they are
seeking, but I think that's --

Q But sometimes if you had a question you would
follow up with --

A Yes, with the requester.

Q To clarify?

A Correct.

Q Is Commission's 66 requesting ground itineraries
for Senator Joseph Bruno?

MR. BREZ: Just -- you're just talking about her
reading it and telling you now what she thinks about it,
right?

MS. SULLIVAN: Yes.

A The request asked for records identifying the
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use of state aircraft by Governor Eliot Spitzer,
Lieutenant Governor David Paterson, Comptroller Thomas
DiNapoli, Senate Majority Leader Joseph Bruno, Assembly
Speaker Sheldon Silver, Assembly Minority Leader James
Tedisco, and Senate Minority Leader Malcolm Smith.

It seems to me that it asks for -- it's a
fairly broad request asking for any records identifying
the use of state aircraft. I don't know if I know what
you mean by ground itineraries.

So I think it's -- it's a difficult
question to answer without either more information about
what you mean by ground itineraries or I would maybe get
more information from the requester if this were just
presented to me.

Q    Well, the last paragraph says, please include
any materials that explain the purpose of the trips;
iteraries, manifests and schedules --

A    Oh, thank you.

Q    -- for Governor Spitzer and Lt. Governor
Paterson, for the days in which they used the aircraft.

And my question is, would that include --
would that request include the Senator?

THE WITNESS: Um --

MR. BREZ: Just so I'm clear, are you suggesting
its two requests in one? When you say that request, are
you referring to all of 66 or just to the portion you just read?

MS. SULLIVAN: The portion I just read.

A I think it's -- to me, it seems hard to separate the request. It's one request, in that he seems to be saying please include, as in please ensure that you include these materials.

I don't know that -- I don't know that those materials would not have been covered by the first part of the request.

MS. TOOHER: How would you make that determination as to what was included in the first part of the request?

THE WITNESS: I think that's getting into work product.

MS. TOOHER: Would you consult with someone?

THE WITNESS: I might.

MS. TOOHER: Who would you consult with concerning aircraft information in the Chamber?

THE WITNESS: My current understanding is Marlene Turner keeps a lot number of the documents related to use of state aircraft, so I would consult with Marlene.

Terry Brennan in our office also keeps travel related documents, so I would consult with her.

You know, this is seeking documents also from

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the Lieutenant Governor's Office. His office is part of the Executive Chamber, so I might consult with them.

MS. TOOHER: And if they were seeking records concerning Senator Bruno, if someone makes a FOIL request concerning Senator Bruno, what would be your response to those types of documents?

THE WITNESS: Do you mean seeking documents from Senator Bruno's Office.

MS. TOOHER: Seeking air travel documents concerning Senator Bruno.

THE WITNESS: I would talk to the people that I just mentioned, to ask if they had any documents, any travel documents concerning Senator Bruno. I think that's how you put it, right?

MS. TOOHER: Yes. And would you reach out to anyone else in the Chamber concerning such documents concerning Senator Bruno?

THE WITNESS: Travel documents concerning Senator Bruno?

MS. TOOHER: Yes.

THE WITNESS: Not -- I don't think on my initial sort of solicitation for documents. But whenever I solicit documents, I'm always asking if there's anyone else who the person knows who might have responsive documents.
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1. It could very well be that there would be others
2. that might have them. And in that case I would follow up
3. with whoever that was.

4. MS. TOOHER: And if there were not responsive
5. documents concerning Senator Bruno, would you go outside
6. the Chamber --
7. THE WITNESS: No.
8. MS. TOOHER: -- to seek those documents?

10. MR. TEITELBAUM: Ms. Treisman, I want you to
11. tell us what the protocol was at or around June 27th, 2007
12. that would have applied to 66. And the steps, as you
13. understood them, that should have been taken in regard to
14. considering and responding to 66?

15. MR. BREZ: Let's just break it down for a second
16. so we can walk through slowly. Are you saying if she had
17. received 66, or you mean even leading up to her receiving
18. 66?

19. MR. TEITELBAUM: Just what should have happened
20. at or around June 27th when this document -- let's assume
21. for the moment that it was received by Dopp around
22. June 27th.

23. So my question is -- I think it's clear. Do you
24. understand my question?
25. THE WITNESS: I think so. Let me give it a
MR. TEITELBAUM: Sure.

THE WITNESS: Rather than -- rather than say what should have happened, let me say what I think would happen if this request came today, let's say.

And I can tell you what I would do. I can't tell you what another FOIL Officer might do or what someone else in our office might do.

If I received this request I would, as I have said before, I would solicit documents from those in the Chamber that I think might have responsive documents.

I think I have said who I think that might be with respect to this particular --

MR. TEITELBAUM: Miss Turner and --

THE WITNESS: Right and others. Again, I would ask them if they knew of anyone else who might have responsive documents.

I would respond to this request in writing within the time frames provided within the Public Officers Law.

And I would provide any responsive documents that were not exempt from disclosure and, if necessary, would make redactions to documents that were responsive, but included certain material that was exempt from disclosure.
MR. TEITELBAUM: And in describing what you would have done, is that to the best of your knowledge what the protocol was in the Executive Chamber with regard to FOIL requests at or around June 27, 2007?

THE WITNESS: That was my protocol at or around June 27, 2007, and I'm the only FOIL Officer in the Executive Chamber.

MR. TEITELBAUM: So am I to infer from that, that that was the protocol that was being followed at or around June 27th?

THE WITNESS: I can't say what others understood or were following in terms of protocol at or around that date.

MR. TEITELBAUM: Well, you already testified that you consulted with others with regard to certain things that should and shouldn't be done, so I'm just trying to -- it's a very -- a very benign question. I just want to know if what you described as something that -- if one of your colleagues in the Executive Chamber looked at what you had done, they would have said, oh yeah, that's what we do. That's what we're supposed to do here.

It's a simple question. And if there is a difficulty with the question, let me know, and I'll ask a different kind of question.
THE WITNESS: I think the difficulty is I think the Executive Chamber has, and I don't know the exact number, I want to say between 200 and 300 employees. I can't say what all of their understanding is with respect to the FOIL protocols. And nor can I say what each of them would have done in that circumstance.

MR. TEITELBAUM: Let me ask you what your understanding was.

THE WITNESS: I've given you what protocol --

MR. BREZ: I think she gave you that.

MR. TEITELBAUM: And, to your knowledge, was the protocol that you've just described followed with respect to 66?

THE WITNESS: I did not receive Exhibit 66 as a FOIL request.

MR. TEITELBAUM: Did anybody else who was a lawyer, to your knowledge, receive it in the Executive Chamber in connection with responding to 66?

THE WITNESS: Not to my knowledge.

MR. TEITELBAUM: Has that been a subject of discussion, that no lawyer reviewed 66 -- I'm not asking what was said.

MR. BREZ: I'm just --

MR. TEITELBAUM: Now let's not pollute the record.
MR. BREZ: I'm looking up. You can answer that.

It's a yes or no question and you can answer it yes or no.

THE WITNESS: The question was, has --

MR. TEITELBAUM: Has the subject --

THE WITNESS: The subject that it wasn't reviewed by any lawyer --

MR. TEITELBAUM: Any lawyer in the Executive Chamber, along the Executive Chamber personnel?

MR. BREZ: Just --

MR. TEITELBAUM: Let me ask about your knowledge obviously.

THE WITNESS: I believe it has, yes.

MR. TEITELBAUM: Can you tell us when that subject first came up, to your knowledge?

MR. BREZ: You can answer, if you know.

THE WITNESS: I don't know.

MR. TEITELBAUM: Was that subject discussed, to your knowledge, with Mr. Dopp?

THE WITNESS: I don't know.

MR. TEITELBAUM: Did you have that discussion, that subject -- did you discuss that subject with Mr. Dopp?

MR. BREZ: You can answer it if you recall.

THE WITNESS: I guess I just wanted to go back to what the subject is that again -- I think, if I
understand it, to make sure we have the same
understanding.

You're asking, was the fact that this was not
reviewed by an attorney ever discussed with Mr. Dopp?

MR. TEITELBAUM:  (Nodded head.)

THE WITNESS:  And I think specifically the
question now is whether I had that conversation with Mr.
Dopp?

MR. BREZ:  Yes.

MR. TEITELBAUM:  We'll take it both ways.  Let's
start with you first.

THE WITNESS:  I do not recall having that
specific conversation with Mr. Dopp.

MR. TEITELBAUM:  Do you know if any other lawyer
in the Executive Chamber had a discussion with Mr. Dopp in
which that subject was discussed?

THE WITNESS:  I -- I don't -- I don't know.

MR. TEITELBAUM:  Now with regard to your -- your
receiving 66 from Mr. Dopp, which you have testified was
the first time that you recall that you saw 66, I want to
see if I can get a more specific date, so let me just see
if I can help you.

The Odato article came out on July 1st, which
was a Sunday.  Did you have your -- did you receive 66
from Mr. Dopp in that week that followed the Odato
article, to the best of your recollection?

THE WITNESS: I believe it may have been in that week that followed or perhaps the following week.

MR. TEITELBAUM: So it was sometime in the first two weeks of June that you received it after the Odato article appeared; is that fair to say?

THE WITNESS: Fair to say.

MR. TEITELBAUM: And I don't want you to tell me what you discussed with Mr. Dopp. I want you to tell me what the subject was.

MR. BREZ: You can, that's okay. Let's start broad and we'll get more narrow.

THE WITNESS: The subject was responding to FOIL requests that I had received for documents related to the Governor or other senior officials travel.

MR. TEITELBAUM: Did the subject come up as to who was going to respond to the subsequent Odato FOIL request -- come up?

THE WITNESS: In -- in -- in that conversation?

MR. TEITELBAUM: Yes.

THE WITNESS: Um --

MR. BREZ: Do you want to talk for a second?

THE WITNESS: Yes.

(Discussion off the record.)

MR. BREZ: Could you read the question back
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1 please?

2 (The question was read back.)

3 THE WITNESS: No, it did not. And I believe

4 that may be in part due to the fact that I don't know that

5 the subsequent Odato request had been submitted at that

6 time.

7 MR. TEITELBAUM: Okay. And so was the only

8 subject that came up between you and Mr. Dopp at that

9 meeting in which he gave you 66, responding to FOIL

10 requests that predated the Odato request?

11 MR. BREZ: The Odato request number two?

12 MR. TEITELBAUM: Yes.

13 MR. BREZ: 88.

14 MR. TEITELBAUM: Which is July 10th.

15 MR. BREZ: Which is 88.

16 THE WITNESS: Yes. I think, as far as I recall, the only conversation -- the only subject of the conversation was responding to FOIL requests that predated the second Odato request.

17 MR. TEITELBAUM: And was it -- was there a decision reached as to who would handle the response to those pre-July 10th non-Odato FOIL requests?

18 THE WITNESS: There was no discussion about that. They had come to me and I was handling them.

19 MR. TEITELBAUM: Now did -- in the meeting that
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1 you had with Mr. Dopp that we were talking about, did you
call him to come to your office or did he just walk in
with 66? How did it happen?

MR. BREZ: You can walk through some of the
steps.

THE WITNESS: Okay. To the best of my
recollection I had asked for -- I had asked some of those
individuals that I listed before for documents that would
be responsive to the FOIL requests that I had received.
In the course of asking for those documents, I
became aware that Mr. Dopp might also have responsive
documents, and I asked him to provide me with documents
that would be responsive to those requests.

MR. TEITELBAUM: In addition to 66, did he
provide you with other documents?

THE WITNESS: Yes.

MR. TEITELBAUM: What other documents did he
provide you with?

MR. BREZ: You can recall, if you remember what
those documents were.

THE WITNESS: I remember them being a group of,
I think, travel manifests, travel documents. I can't
recall specifically what all the documents were, but --

MR. TEITELBAUM: Did he tell you at that point
that these were the documents that he gave to Odato in
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response to 66?

THE WITNESS: Can I answer that?

MR. BREZ: Yes.

THE WITNESS: Yes.

MR. TEITELBAUM: Did he give you any other documents besides the documents that he said were the documents that he gave to Odato in response to 66?

THE WITNESS: I'm sorry, did he give me any other documents?

MR. TEITELBAUM: Did he give you any other documents --

MR. BREZ: Other than 66 also?

MR. TEITELBAUM: Correct.

MR. BREZ: You can answer, if you remember.

THE WITNESS: I don't recall if he did or not.

MR. TEITELBAUM: Do you remember when Mr. Dopp was suspended?

MR. BREZ: Just to make sure we're talking about the same date. You said he was suspended without pay, these you're talking about?

MR. TEITELBAUM: Yes.

THE WITNESS: I actually don't know if I know the exact date that he was suspended. I recall hearing about it after the Attorney General's report was issued.

MR. TEITELBAUM: So this meeting obviously
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occurred before he was suspended without pay; correct?

THE WITNESS: Yes. As far as I know, yes.

MR. TEITELBAUM: And when he gave you the
documents that he said he had given to Odato in response
to 66, what did you do with those documents?

THE WITNESS: I put them in a file that I was
keeping of potential responsive documents to the requests
that I had received.

MR. TEITELBAUM: Did you eventually send those
documents out to anybody who was -- people who make the
FOIL requests?

THE WITNESS: I don't recall specifically. I
would -- I know that I sent some documents in response to
these requests.

MR. BREZ: By these requests --

THE WITNESS: These requests, I'm sorry, Exhibit
112. And oftentimes what happens is I will receive the
same document from a number of different people in the
Executive Chamber.

It is certainly possible that among the
documents that I sent in response to the request marked
Exhibit 112, they included documents that had been
provided to -- that Mr. Dopp indicated he had provided to
Mr. Odato.

MR. TEITELBAUM: Just so we're clear on what my
question is. To be precise, when I asked you whether you
had sent the documents that Dopp gave you, when he gave
you 66, to other persons who had given the Executive
Chamber FOIL requests, including 112, I don't mean the
precise documents, but I mean copies of such documents as
well.

THE WITNESS: I understand. And I was talking
about copies as well. What's difficult is that each of
these requests in 112, for example, is worded slightly
different, asks for slightly different things.

So -- and I can't remember exactly what was
provided in response to each of these requests. But it is
possible, probably likely, that there were among the
copies of documents that were sent out in response to
these requests, there were similar -- they were the same
as the documents or some of the documents that had been
provided to Mr. Odato.

I just don't know if it was the complete set, if
there were some of them, etc.

MR. TEITELBAUM: Did you review the documents
that Dopp gave to you?

THE WITNESS: Yes.

MR. TEITELBAUM: For what purpose?

THE WITNESS: For the purpose of responding to
the FOIL requests that I had received.
MR. TEITELBAUM: And in reviewing those documents for that purpose, did you make a determination as to whether any of the information contained in those documents should be redacted?

MR. BREZ: Just so we're clear, should be redacted if they were going to be produced in response to subsequent FOIL requests?

MR. TEITELBAUM: Correct.

MR. BREZ: Do you understand what he's asking?

THE WITNESS: I do. I -- I -- that's a part of my procedure for all FOIL requests and --

MR. TEITELBAUM: And did you make that determination with respect to those documents, whether there was information in there that should be redacted, in your view?

THE WITNESS: If it was -- if there was a document that was responsive to one of the requests I was responding to? Yes, I would analyze it to see if there was information that needed to be redacted.

MR. TEITELBAUM: The reason I'm asking these follow up questions is because you had testified as to the purpose for your reviewing the documents to see if they were responsive.

Now do you -- do you recollect whether any of those documents was responsive to any of the FOIL requests

THE WITNESS: I do not.

MR. TEITELBAUM: You do not recollect whether any of the documents was responsive to the FOIL requests?
that you were looking at?

THE WITNESS: I can't answer that question without having copies of either the responses or -- I mean we could go one by one through the requests and I could look at the documents, but I have -- I can't recall off the top of my head.

MR. TEITELBAUM: I understand. Did the subject matter of the redactions, of all or part of any of the documents that Dopp gave to you, and when he gave to you 66, come up?

THE WITNESS: Come up?

MR. BREZ: Say it again.

MR. TEITELBAUM: Did that subject come up?

THE WITNESS: When?

MR. TEITELBAUM: At any time?

THE WITNESS: With who?

MR. BREZ: Wait, talking to Dopp?

MR. TEITELBAUM: No, no. The subject, did the subject of the redactions of documents --

MR. BREZ: Oh.

MR. TEITELBAUM: -- all or part of the documents that Dopp gave to you in 66, ever come up?

MR. BREZ: Are you saying, did she ever discuss with somebody --

MR. TEITELBAUM: That subject.
MR. BREZ: -- redacting -- the redaction of those documents.

MR. TEITELBAUM: In whole or in part, did that subject ever come up?

THE WITNESS: I don't recall. Did it ever -- did I ever talk about it with somebody, is that what you're asking?

MR. TEITELBAUM: Yes.

THE WITNESS: I don't recall.

Q Ms. Treisman, I'm going to show you what has been marked as Commission's 91.

MR. TEITELBAUM: Ms. Treisman, before you get into 91, did you in fact respond to the pre-Odato FOIL requests?

MR. BREZ: By that he means 112.

MR. TEITELBAUM: That's right.

THE WITNESS: There are four different requests here (indicating documents.)

MR. TEITELBAUM: Yes. Did you respond to any one of them?

THE WITNESS: I -- I believe that I handled, to the best of my recollection, each of these requests.

With respect to the fourth one, which is Bates Stamped E6, I believe -- I believe I was unable to respond to Mr. Checca's request, because he did not provide us
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1 with a return address.

2 If I remember correctly, my -- I had my
3 assistant try to reach him a number of times to get an
4 address that we could respond to.

5 And we never received a call back, so I believe
6 that might be the one exception. But otherwise, I believe
7 I responded to the requests.

8 MR. TEITELBAUM: So you responded to a request
9 by Nicholas Confessore, C-o-n-f-e-s-s-o-r-e, Bates Stamped
10 E quadruple 05. And the one from Matthew Walter, Bates
11 Stamped quadruple 04, and the one from Joshua Robin, Bates
12 Stamped quadruple 03?

13 THE WITNESS: Yes.

14 MR. TEITELBAUM: And in your response to these
15 three requests, did you send out documents?

16 THE WITNESS: Without my responses in front of
17 me, and I don't know if you have them or not, I will give
18 you to the best of my recollection.

19 MR. TEITELBAUM: To the best of your -- the best
20 that you recall.

21 THE WITNESS: I believe there were some
22 documents sent in response to the Robin request.

23 MR. TEITELBAUM: Mm-hmm.

24 THE WITNESS: I believe there were some
25 documents sent in response to the Walter request.
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And I do not believe that I sent documents in
response to the Confessore request.

MR. TEITELBAUM: And do you have copies of the
documents that you sent in response to the Robin and
Walter requests?

MR. BREZ: You mean on her?

MR. TEITELBAUM: No, not with her now, but did
you make copies, do you maintain copies?

THE WITNESS: In our typical practice we
maintain copies, so I would presume that we have them,
yes.

MR. TEITELBAUM: Are those in your office?

THE WITNESS: Yes.

MR. TEITELBAUM: Why do you maintain copies, by
the way?

THE WITNESS: I think there probably are a
number of reasons, but perhaps the most important is that
the Freedom of Information Law gives people a right to
appeal and the right, indeed, to bring an Article 78
proceeding if they disagree with the response.

And it seems important that we have copies of
what the response was, so that our appeals officer can
review the response when making an appeal determination.

Q Would you take a look at Commission's 91? Would
you identify that document for us?

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TREISMAN

A This is a letter dated August 14th of 2007 to
Mr. James M. Odato from myself, Mariya Treisman, as the
Records Access Officer.

Q Did you have any conversations with Mr. Odato
about the contents of this letter?
A No.

Q And you stated that you have conducted a
thorough review of the files. Could you explain that
review to us?
A It's the review that I've discussed earlier in
testimony, which is I ask anyone in the Chamber who might
have responsive -- who I believe might have responsive
documents, whether they have any.
I collect those documents. I also ask if
there's anyone else in the Chamber that those people are
aware of that might have responsive documents and collect
those documents.
I then review them pursuant to the Freedom
of Information Law and make a conclusion about what's
responsive.

Q And your review was limited to the Executive
Chamber, correct?
A Yes.

Q It did not attend to other agencies, correct?
A No.

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And you state that certain portions of the documents are exempt pursuant to Public Officers Law Section 87(2)(b) or (f). That is in conjunction with those standards that you articulated earlier in the Public Officers Law of Section 87, correct?

Correct.

I'm going to show you now Exhibit 92 and have you take a look at that.

(Whereupon the witness was handed the documents to review.)

MR. BREZ: This looks like a somewhat thick document. Is there a chance we could take a 5 minute break and we can have a walk through this? We've gone for a couple hours without a bathroom break.

Sure.

That would be great.

Can she go take a bathroom break?

Oh, sure.

(Discussion off the record.)

Mariya, I think we were looking at Commission's 91, and I just handed you Commission's 92.

Yes.

Could you explain what Commission's 92 is?

(Whereupon the witness reviewed the documents before her.)
A Yes, this appears to be a large number of documents -- admittedly my math is not very good, but Bates Stamped E352 through E385, and there are a number of things here.

There are several documents that have the New York State Police heading on them, appear to be sort of flight schedules.

There are documents that, at the top state NY State Police, Aviation Passenger Data for various dates in the month of June.

There are documents with the heading, Flight Request Information.

Actually, only one document with that heading. There are documents with the Governor's schedule for various dates in the month of June.

And there are documents which are not marked but which I have -- but which appear to be -- yes, actually some of them are marked. They're marked DAP schedule, which I believe stands for David A. Paterson, the Lt. Governor's schedule.

And then there's one other kind of document at the end, which appears to be a listing of the date, the destination, passengers in the airplane used by the Governor and the Lieutenant Governor, all with dates in the month of June.
TREISMAN

Q Commission's 92 is the 34 page response that you indicated in Commission's 91, correct?

A It appears to be.

Q Could you take a look at the Bates 352 to 358, and I'm noting that there's some redactions on the bottom of each of these sheets.

And could you explain to us what was the standard that you applied in formulating these redactions?

MR. BREZ: Want to see this?

(Whereupon the witness was handed the Public Service Law book to review.)

A As indicated before, as with all FOIL requests, I review them to determine if there are any exemptions that apply under Public Officers Law Section 87(2), and that was the standard that I applied here.

Q In 87(2), is there a particular subdivision? In 87(2), is there a particular subdivision?

A Well, as noted in my letter to Mr. Odato, which is Commission Exhibit 91, the portions of the documents that were redacted I found to be exempt from disclosure pursuant to either Public Officers Law Section 87(2)(b) or (f).

Q So (b) being that it would either constitute an unwarranted invasion of personal privacy or (f), if it was -- if it were to be disclosed and could endanger the life or safety --
TREISMAN

1    A    Correct.
2    Q    -- of any person. The portion that's blocked
3   out in Bates 352 to 356, would I be correct in assuming
4   that that was some sort of contact information?
5    A    Without the originals in front of me, I can't
6   answer for sure, but that's my recollection, yes.
7    Q    And then can I turn your attention to Bates
8   356 -- I'm sorry, 365 to 374? These appear to be the
9   Governor's schedules. And could you tell me what was the
10   standard that you applied in the redactions of the
11   Governor's schedule?
12    A    As with the other documents, I reviewed them
13   pursuant to Public Officers Law Section 87(2) to determine
14   if anything was exempt.
15                  And as indicated in the letter to
16   Mr. Odato, the portions of the document that were
17   redacted, I found to be exempt from disclosure pursuant to
18   Public Officers Law Section 87(2)(b) or (f).
19    Q    And if I turn your attention to Bates number 375
20   through 383, these appear to be the schedules of the
21   Lieutenant Governor, and ask you the same question?
22    A    Yes. As with -- as with the other documents, I
23   reviewed them pursuant to Public Officers Law Section
24   87(2), to determine if any of the information was exempt
25   from disclosure.
And as indicated in the letter to Mr. Odato, Exhibit 91, I found certain portions to be exempt pursuant to Public Officers Law Section 87(2)(b) or (f).

Q And in making that determination did you confer with anyone from the Lieutenant Governor's Office?

A I believe I did, yes.

Q And could you tell us who that was?

A To the best of my recollection it was Charles O'Byrne, but I don't recall for sure. Charles O-'-B-y-r-n-e.

Q And in the Governor's schedules, did you confer with anyone else in making a determination as to the exemptions?

A To the best of my recollection, I think I may have conferred with Marlene Turner in the Governor's Office.

I may also have conferred with either Terryl or -- Terryl Brown Clemons or David Nocenti in our office.

Q Could you tell us what you looked for in making that determination? I'm talking about the Governor's schedule. Are there specific events that maybe are of a private nature?

A I think as we start to get into the specifics of
what I look for, this may get into work product, so I hesitate to answer. If you want to be more specific, I can try.

Q  If an event were purely public, would that cause you any concern? If the Governor was giving a speech?

A  Would it cause me any concern? Again, I would look at each document, applying each of the, you know, considering each of the potential exemptions under the Public Officers Law, and try to make some -- and not try, but draw some conclusions about whether an exemption applied or not.

It's difficult to say that an entire type of event or information either would or would not be exempt.

Q  Can I draw your attention to E364? This is the flight request information for Senator Bruno, and could you tell me what standard you looked at in considering whether this document would be redacted?

A  I reviewed the document pursuant to Public Officers Law Section 87(2) to determine if any portion of the document would be exempt from disclosure.

And as indicated in my letter to Mr. Odato, Exhibit number 91, I concluded that certain information was exempt pursuant to Public Officers Law, Section 87(2)(b) or (f).
It appears from 364 that you redacted the contact information for Mrs. Leslie King; is that correct?

Without the original in front of me, I can't say for sure, but that appears to be accurate.

Would that redaction be pursuant to Subsection (b) or Subsection (f)?

Again, without the original and the specific information in front of me, it's difficult to say for sure.

But contact information, depending on what it is, often is -- often, I believe, could constitute an unwarranted invasion of privacy, which is Public Officers Law Section 87(2)(b).

Certain contact information might also endanger the life or safety of another person, so it could in some instances also be (f). It's difficult to say, without seeing the original, what the determination was here.

MR. TEITELBAUM: I just want to put on the record that we were never even provided, by the Executive Chamber, with the unredacted version of this document. And of course we're not holding you accountable for that.

MR. BREZ: Right. I just want to state for the record that Ms. Treisman didn't produce any of these documents.
THE WITNESS: Right.

MR. TEITELBAUM: We understand that.

MR. BREZ: Okay.

MR. TEITELBAUM: But to the extent that there is ambiguity in your answers, we're going to have to get that document, and get that and bring it back.

So to the extent that you could give us as firm an answer as you can with respect to these redacted portions -- and I can understand why that might be challenging.

You should understand that we're in a difficult position here because we don't have the unredacted document.

MR. BREZ: Everyone is on the same page with that. I think she's doing the best that she can do to answer, based on what's put in front of her.

I don't think she's accusing you or your office of hiding the unredacted version from her.

MR. TEITELBAUM: No, no, no, I didn't infer that.

MR. BREZ: But she's just -- she's doing what she can do to answer, based on how it appears.

MS. TOOHER: On Bates 364, the contact information, the office contact indicates the contact name and phone number.
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THE WITNESS: Mm-hmm.

MS. TOOHER: And the name provided in the next section is redacted.

THE WITNESS: Mm-hmm.

MS. TOOHER: If that were the phone number, would a redaction be pursuant to Subsection (b) or Subsection (f).

THE WITNESS: I believe if it were the phone number, and based on this document which asks for the office contact and then states a name.

And then if there were just a phone number, I believe that redaction would fall under Subsection -- subdivision, I always lose track of which is which in the statute.

But (b), which would be the unwarranted invasion of personal privacy, under the provisions of Subdivision 2 of Section 89 of this Act -- or Article. Sorry, the page was turned over there.

MS. TOOHER: And if you turn your attention to Bates 376, which is the schedule of the Lieutenant Governor for 6-14-2007. And at the top of the page it has the investigator and then that information is blocked out.

THE WITNESS: Yes.

MS. TOOHER: And although I understand that you can't make a determination in looking at other similar
schedules that we have seen, that has typically been the
investigator's name.

If it were the investigator's name, would that
information be redacted pursuant to Subsection (b) or
Subsection (f)?

MR. BREZ: I just want to -- your question
implies it could only be pursuant to one or the other.

MR. TEITELBAUM: No, it could be both.

MS. TOOHER: Yes.

MR. BREZ: You're not asking her --

THE WITNESS: In this case, if it is the
investigator's name, potentially contact information, I
believe it could be either.

Q Did you actually create the redactions? Did you
put the black marker on Exhibit 376 -- Bates 376?

A To the best -- let me explain sort of what the
sort of standard practice is. I believe the answer is yes
in this case, I did do the redactions myself.

In some instances I will ask my assistant
to help me with that, but I will direct her with respect
to what needs to be redacted.

Q And again in Bates 376, you conferred with
Counsel for the Lieutenant Governor?

A I believe Mr. O'Byrne is the Chief of Staff for
the Lieutenant Governor.
TREISMAN

Q Chief of Staff. You conferred with him on what portions of this document would be redacted?

A I don't know that we spoke specifically about this page, but I believe I conferred with him about the Lieutenant Governor's schedule and what the certain information in the schedule was, in order to assess it under the Public Officers Law.

MR. TEITELBAUM: Ms. Treisman, I'm hoping that you have a sufficiently clear recollection to help me out with some of these pages on 92. Turn to 365 please.

What type of information is provided in the Sunday, June 17th -- what's the type of information, to the best of your recollection?

THE WITNESS: I can't remember.

MR. TEITELBAUM: If it were an address of an event, would you have redacted it?

THE WITNESS: I did redact it. I don't --

MR. TEITELBAUM: Do you believe it was the address?

THE WITNESS: I don't -- I don't know.

MR. TEITELBAUM: If it were the address, would you have redacted it?

THE WITNESS: It would depend on what the address was for.

MR. TEITELBAUM: Well, this is the Governor's
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schedule. And it references: Event, notes, status, time
and place. Does that help you with the kind of
information that's there?

THE WITNESS: I understand the type of
information that's there, but if you look up on the page
to June 15th at 10:00 a.m. you'll see there's an address
that's included there.

MR. TEITELBAUM: Right.

THE WITNESS: So I obviously did not redact
every address.

MR. TEITELBAUM: I understand.

THE WITNESS: So I can't say whether, if there
were an address, it would be redacted.

MR. TEITELBAUM: So sometimes you redact an
address and sometimes you don't?

THE WITNESS: Correct.

MR. TEITELBAUM: Given the restrictions that
your Counsel has implied here, we're going to have to call
you back when we get the unredacted version.

If I could get information as to why sometimes
you redact and sometimes you don't, we may be able to
avoid that.

MR. BREZ: Well, one, I assume you're just
trying to make this helpful and not threatening her.

MR. TEITELBAUM: No, I'm not. I'm just saying I
TREISMAN

1 can't get the information.

2     MR. BREZ: I want to make sure we're clear about that. Two, I'm not positive, because I didn't produce
3 this to you and I didn't look at it, whether or not you're entitled to the unredacted version, so I'll put that on
4 there.

5 Three, maybe Ms. Treisman and I could talk about types of things that she routinely redacts, where it might be this entire portion; with the understanding that she obviously can't read behind here what's there, and maybe she can give you some examples of things that might be redacted.

6 But I would have to talk to her off the record in order to be able to do that. Great, let's go off the record.

7 (Discussion off the record.)

8     MR. BREZ: We're back. And I think Ms. Treisman obviously can't see what's under here (indicated). And what I've asked if she would do for you to be helpful, is to give you some examples that she recalls of instances where she redacted an entire line of information. We'll start there.

9     MR. TEITELBAUM: Let's start there.

10     MR. BREZ: And then if you want follow up to that, she'll follow up. But she doesn't know what's

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there.

So let's start with what types of whole categories to redact.

THE WITNESS: Sure. We're looking at the Governor's schedule now.

MR. TEITELBAUM: On 365?

THE WITNESS: On 365. And to give, as my Counsel said, an example of the type of thing that might be redacted in this way would be something that was purely personal and private for the Governor.

A specific example, I should say for the Governor or his family. And a specific example would be one of his daughters is having a basketball game.

That, you know, ends up on the Governor's schedule maybe every week or every two weeks.

And for both privacy and safety concerns, we would not necessarily want everyone to know that the Governor's daughter was playing basketball at a certain place at a certain time.

Similarly, if the Governor and his family are on vacation, we may not want people to know where. That is, again, for both personal privacy reasons and for safety reasons.

MR. TEITELBAUM: How about flight information?

Look at 365 in the Wednesday, June 13th. It says
Continental flight, and then there's a redaction. It seems to me that that's probably the flight information, wouldn't you think?

THE WITNESS: It seems like it might have been, but it's hard to say.

MR. TEITELBAUM: Would you redact flight information for the Governor for safety and privacy reasons?

THE WITNESS: Yes. I would say that in most -- in many circumstances, possibly not all. As with any FOIL analysis, it's a judgment call.

And different FOIL officers may make different determinations. I may even make different determinations if I've gotten requests at different times.

So I don't know if on every page of the Governor's schedule I would redact the flight information. I don't have a specific set of rules like that.

Rather, I do what the law says, which is to analyze every document to determine whether anything is exempt.

MR. TEITELBAUM: And on 367, that's Bates Stamped 367 of Commission's 92, it has contacts, and then there's a redaction on Friday, June 15th. Can we agree that that's probably a name?

THE WITNESS: That would make sense, yes.
MR. TEITELBAUM: And that's been redacted for privacy reasons?

THE WITNESS: Yes, probably. I would say that I know from reviewing the Governor's schedule, sometimes the contact will include a name.

Sometimes it will just be a number. It's hard to say exactly what it was in this case.

MR. TEITELBAUM: In other words, information identifying the contact, whatever it is, either name or number, would be deemed private?

THE WITNESS: In many instances, I believe yes, the exemption under Section 87 -- 87(2)(b) of the Public Officers Law would apply to that information.

Again, there are no absolutes with respect to my FOIL analysis, and particularly in this context.

If the contact is, for example, Mariya Treisman in the Governor's staff, I would probably not chose to redact my name because I'm a member of the Governor's staff.

MR. TEITELBAUM: On 368 for Tuesday, June 19th, the last name of Sonya was redacted. Is that for privacy reasons?

THE WITNESS: Again, it may or may not be the last name. It could have been Sonya was just a phone number.
MR. TEITELBAUM: But it's contact information?

THE WITNESS: Yes, I believe so. And yes, that would be redacted pursuant to Public Officers Law Section 87(2)(b).

MR. TEITELBAUM: Now when you spoke to O'Byrne, you discussed with him what should be redacted from the Lieutenant Governor's -- to the documents relating to the Lieutenant Governor, that's in 92?

THE WITNESS: To the best of my recollection, I talked to Mr. O'Byrne about some of the information, and how the Lieutenant Governor's schedule and security and those kinds of issues work.

I did not talk to Mr. O'Byrne about what specifically should be redacted, because that's my decision to make under the FOIL law.

MR. TEITELBAUM: Was your discussion with O'Byrne in the context of assisting you in making the decision about what to redact?

THE WITNESS: Yes. I don't know that he would frame it quite that way. That is, I may not have said to him, I'm trying to figure out what to redact.

I may have said I need some more information about these schedules, and we would have just had that conversation.

But yes, for my purposes, I was gathering the
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And why did you feel it was appropriate to contact O'Byrne to elicit the information that you elicited?

He's the Lieutenant Governor's Chief of Staff so he knows, for example, the role that the investigator plays. You know, he knows the Lieutenant Governor's schedule probably as well as anybody, so --

What kinds of questions did you ask him which assisted you?

I'm not sure I remember the specific questions.

Generally, if you can't remember specifically.

Well, the one -- the issue I remember most clearly was the question of the investigator.

Obviously on the Governor's schedule we don't have a similar designation, so I asked what role that investigator plays in --

What did he tell you?

Before you answer that --

Yes.

We're going to step out in the hall for a second.
MR. TEITELBAUM: You're claiming privilege?

MR. BREZ: I want to ask her. I want to ask her before she answers. You can't put toothpaste back in the tube.

(Discussion off the record.)

MR. BREZ: Back on the record. We went off the record because I had a concern about Ms. Treisman answering the question that was posed to her.

That concern remains and here's why. Let me see if I can enunciate it.

As I understand it, the Lieutenant Governor's Office is part of the Executive Chamber. And Mariya works as Counsel to the Executive Chamber.

And in her capacity in determining what is responsive and what should be redacted in responses to FOIL requests to the Executive Chamber, that includes responding to, on behalf of the Lieutenant Governor, who does not have his own FOIL Officer.

So conversations that Mariya had between herself and her client, in this instance Chief of Staff to the Lieutenant Governor; to the extent that those conversations occurred to assist Ms. Treisman in making a determination about what to provide via FOIL and what would be redacted, are privileged conversations for which neither she nor I can waive that privilege.
TREISMAN

1 So the substance of the conversations between
2 her --
3
4 MR. TEITELBAUM: That question, I think, is
5 going to have to be determined by somebody other than the
6 people in this room.
7
8 MR. BREZ: Fair enough.
9
10 MR. TEITELBAUM: Because that's a very very
11 broad application of the privilege.
12
13 MR. BREZ: I couldn't disagree with you more
14 about the nature of the broadness of the application, but
15 I agree with you that it's a determination that, if you
16 choose to push it, will have to be made by someone outside
17 this room.
18
19 It's certainly not being made by anyone on this
20 side, that being me and Ms. Treisman.
21
22 MR. TEITELBAUM: I understand. I understand.
23
24 Did you, in reviewing a document subject to a FOIL
25 request, routinely redact the identity of an investigator?
26
27 THE WITNESS: Again, I analyze each request
28 independently, so I don't have a set of rules by which I
29 decide what to redact and not redact. I follow the Public
30 Officers Law.
31
32 MR. TEITELBAUM: Could you read back my question
33 please?
34
35 (The question was read back.)
MR. BREZ: Do you have anything else to add to your answer, other than what you just did?

MR. TEITELBAUM: I'm asking you again -- that was not an answer to my question. I understand -- I understand that Mrs. Treisman looks at documents and she makes determinations about documents as they're presented to her.

MR. BREZ: Great.

MR. TEITELBAUM: That's not what I'm asking about. I'm asking about routinely, as you look back on the last -- let me finish my question.

MR. BREZ: All right.

MR. TEITELBAUM: As you look back on your last ten months of your performing these duties, have you generally redacted the identity of investigators?

MR. BREZ: If you recall the answer to that question, you should answer it.

THE WITNESS: I don't -- I don't know how to answer that question, because I don't know how many documents have investigators listed on them. I get FOIL requests for all kinds of different documents, very few of which I believe actually have investigators on them.

MS. TOOHER: Do you do that on schedules?

MR. BREZ: What's that?
MS. TOOHER: Do you redact the names of the investigators on schedules routinely?

THE WITNESS: I --

MR. BREZ: I'm not sure how that's different from the last question that was just asked.

MR. TEITELBAUM: It's more specific, she's asking now about schedules.

MR. BREZ: We're talking about schedules.

MS. TOOHER: You had indicated you received different types of documents. And I'm asking you specifically, and I don't know if your answer is any different, but do you routinely remove the names of investigators from schedules for the Governor and the Lieutenant Governor when they're sought under FOIL?

THE WITNESS: Again, I'm not sure I can answer that question with either a yes or no. We're looking at schedules for the Lieutenant Governor where I have chosen to redact the investigator.

So I can say that in response to certain -- not in response to certain FOIL requests, I'm sorry. But that, yes, I have redacted the name of the investigator or the contact information for the investigator on schedules.

If you look at the Governor's schedules here, and again we don't know what the information that's been redacted, but I don't see anything that indicates an
investigator's name, so I'm, again, not sure that it comes up enough to say whether it would be a routine determination or not.

MS. TOOHER: If an investigator is listed on a schedule, is that something that you would consider redacting under FOIL?

If it said just the name of the investigator on the daily schedule for either the Lieutenant Governor or the Governor?

MR. BREZ: I'm not sure I understand what you're saying. Say it again?

MS. TOOHER: If the name of an investigator is listed on the schedule for the Governor or the Lieutenant Governor, is that something that you would consider redacting under FOIL?

THE WITNESS: I would review the entire document and consider whether I should redact anything, including the investigator's name under FOIL.

MS. TOOHER: And what would be the factors that you would consider in redacting the investigator's name on a schedule?

MR. BREZ: I'm just going to caution you to be careful in your response, not to provide the machinations of what I would call in work product, in your head, about how you analyze that statute.
Barring that, you're free to answer the rest of it.

THE WITNESS: I would apply the factors that are detailed in the Public Officers Law, both Section 87 and I believe Section 89 also.

MS. TOOHER: And would you be able to make a determination, under Section 87, as to whether or not you could redact an investigator's name solely based on what was in the schedule?

THE WITNESS: I don't know. It would depend on what was on the document.

MR. TEITELBAUM: Ms. Treisman, has there ever been a time in performing the functions that you performed with respect to FOIL, that you allowed the identity of an investigator to be disclosed?

THE WITNESS: I don't know.

MR. TEITELBAUM: You can't recall any?

THE WITNESS: I don't know.

MR. TEITELBAUM: My question is, can you recall any?

MR. BREZ: She answered your question twice.

MR. TEITELBAUM: You don't know if you can't recall any? I'm asking, can you recall any? That can be answered with a yes or a no. If you can recall, tell me. If you can't recall, tell me I can't recall.
MR. BREZ: Just say yes or no.

THE WITNESS: I can't recall one way or the other.

MR. TEITELBAUM: Can you tell us a circumstance in which you would permit the identity of an inspector to be disclosed in a FOIL document?

MR. BREZ: Do you mean investigator, not inspector?

MR. TEITELBAUM: I'm sorry, investigator. Thank you.

THE WITNESS: Again, I think that that's getting into my internal work product analysis.

MR. TEITELBAUM: I'm not asking you for any work product, because we're not talking about a particular document.

MR. BREZ: Yeah, you're --

THE WITNESS: You asked for circumstances.

MR. TEITELBAUM: I'm asking you for a hypothetical circumstance. Give me a hypothetical circumstance in which you would disclose the identity of an investigator.

MR. BREZ: You're asking her -- let me make sure I understand this. You're asking her if she can come up with a hypothetical circumstance --

MR. TEITELBAUM: Right.
MR. BREZ: -- wherein she would be comfortable identifying an investigator's name? Not how she would get there, but the circumstances where she --

MR. TEITELBAUM: Yes, what's the circumstance when she would do it?

MR. BREZ: If you can come up with a circumstance like that, describe it. If not, don't.

THE WITNESS: Unfortunately I've never been very good at hypotheticals. And under pressure --

MR. TEITELBAUM: If you can't do it, tell me.

THE WITNESS: I'm sorry, I can't.

MR. TEITELBAUM: This may have been asked, and forgive me if it had been. Did you show 92 to anybody in the Executive Chamber before it went out?

THE WITNESS: I'm sorry, but I just don't remember if I did or not.

MR. BREZ: You don't have to apologize.

MR. TEITELBAUM: And was 92 considered a particularly important document, given the Odato article?

MR. BREZ: Considered by her?

MR. TEITELBAUM: By the Chamber.

MR. BREZ: To the extent you know the answer to that.

THE WITNESS: I'm not sure what you mean by important.
MR. TEITELBAUM: Worthy of particular attention.

THE WITNESS: I can't say what was in the minds of the other members of the Executive Chamber.

I can tell you that I treated this as I would any FOIL request, and was never instructed to do any differently.

MR. TEITELBAUM: Are you aware of any course of conduct on the part of anybody in the Executive Chamber, where if a FOIL request were particular controversial, you would be bypassed, and it would be handled by others?

THE WITNESS: I'm not aware of any such protocol.

MR. TEITELBAUM: Are you aware of that ever happening?

THE WITNESS: Am I? Am I aware of it happening because it was of a particular public importance?

MR. TEITELBAUM: Yes, or politically sensitive.

THE WITNESS: I hesitate, because I am aware that there is at least one FOIL request out there that did not come to me.

MR. TEITELBAUM: That was the June 27th Odato request?

THE WITNESS: Correct. I don't know why that didn't come to me, so I don't know if it fits into the scenario that you've presented, but --
MR. TEITELBAUM: But other than that, other than that FOIL request?

THE WITNESS: Not that I'm aware of.

Q I would like to show you Commission’s Exhibit 4.

(Whereupon the witness was handed the documents to review.)

MR. BREZ: This is 4, you say?

MS. SULLIVAN: Yes.

Q And ask you if you've seen this document before?

A Not that I recall, but I have reviewed a number of documents in connection with FOIL requests, and I don't whether this was among them. I don't recall seeing it.

Q Were you aware that the Executive Chamber possessed this document, Commission’s 4?

MR. BREZ: I take it you're representing that this came from the Executive Chamber? It doesn't say that on its face, but I'm assume in your question, since you're saying that -- you're not trying to trick her.

MS. SULLIVAN: No.

MR. BREZ: You're representing that this came from the Executive Chamber?

MS. SULLIVAN: Yes.

MR. BREZ: Okay.

THE WITNESS: Again, because I don't recall seeing it, I can't say that I was aware that it was in the
Executive Chamber.

I would just also again repeat that I review a lot of documents in connection with FOIL, and it could be that this was among them and I just don't remember it.

MS. SULLIVAN: I'm going to show you now Commission's 1 through 5.

(Whereupon the witness was handed the documents to review.)

Q I'm going to ask you if you have ever seen Exhibits 1 through 5 before?

A I don't recall specifically. These look like the kind of documents that may have been collected in connection with responding to some of the FOIL requests that I have received.

So it may be that I have seen them before, but I don't specifically recall whether I did or not.

Q On Commission's 1, 2, 3, 4 and I believe 5 as well, the investigator's name is indicated on each of those documents.

Applying the standard that you applied to Exhibit 92, if you had these documents in your possession, would you have considered redaction of the investigator's name?

MR. BREZ: Do you understand what she's asking?

THE WITNESS: I do.
TREISMAN

A  I don't see the investigator on Exhibit 5 -- I do, I see it.

Q  It's in the middle of the document.

A  And I see it.

Q  And I think his phone number as well is listed.

A  As with all -- if I were reviewing these in response to a FOIL request, I would review them pursuant to Public Officers Law Section 87(2) and make a determination.

That would include, obviously, everything that's on the document, including the investigator's name.

Q  So on Exhibit 1, you would consider redaction of Investigator John Colon, C-o-l-o-n?

A  Again, it would be done in the context of the review of the complete document. I guess I think of it slightly differently than maybe the way you're presenting the question.

Which is, I know it's sort of categorized, investigators into a specific category, but I would consider whether their names or other information on the document fall within any of the exemptions.

Q  Would you have conferred with anybody in making that determination?

A  I may have.

Q  Would you have conferred with anyone from the ALLIANCE REPORTING SERVICES, LLC
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Senator's office?

A I can't say for sure. I may have.

MS. TOOHER: Looking at Commission's 1, as it stands today, can you make a determination on redactions under the Public Officers Law, just looking at this document?

MR. BREZ: Are you saying, can she -- not is it possible that one could? Can she, sitting here, not doing anything else, just making that determination?

MS. TOOHER: (Nodded head.)

MR. BREZ: I think it's just a yes or no question to start out with.

THE WITNESS: Oh, okay. Sitting here today, I'm not -- was the question, could I make a determination?

MS. TOOHER: Can you make a determination as to what you need to redact under the Public Officers Law, looking at this document?

THE WITNESS: It's a caveat that, again, FOIL -- making a FOIL determination is a judgment call, somewhat of an art, not a science, I would say.

If I were reviewing this document today, I would probably ask for some more information about the document from somebody who has more familiarity with this particular document before I made a determination.

MS. TOOHER: And looking at Commission's Exhibit
2, same question.

MR. BREZ: If it's the same response, just say that.

THE WITNESS: I'm going to say same response.

Yes, same response.

MS. TOOHER: Exhibit 3?

THE WITNESS: Same response.

MS. TOOHER: Exhibit 4?

THE WITNESS: Same response.

MS. TOOHER: And Exhibit 5?

THE WITNESS: Same response.

MS. TOOHER: And just so I can be clear on what your response is, and please correct me if I'm mistaken, you would need to confer with someone who was more familiar with what was contained in the document; is that correct?

THE WITNESS: Again, sitting here today as I look at it, that is what I would do, is confer with somebody.

Whether I would need to or not is maybe a different question, but that's -- just sitting here looking at it, that would be the next step I would take in this case.

MS. TOOHER: (Nodded head.)

Q In Commission's Exhibit 5, there is information
at the top, helicopter, and then an N430NY, which appears to be the tail number of the chopper. Would that be information that you would redact?

A I would consider it. I don't know for sure.

Q Again, would you have to confer with somebody else or seek out more information?

A I might, if I -- yes, I might have to seek out more information if I didn't already, you know, know something about tail numbers or whatever. Which, sitting here, I don't.

MR. BREZ: Assuming that's the tail number.

THE WITNESS: Yes, right, exactly. Assuming that it is -- so yes, I probably would ask somebody for more information.

MS. TOOHER: I just very quickly wanted to ask you a couple of questions on Commission's 91, which is your August 14, 2007 letter. Is this a form response letter generated by your office?

THE WITNESS: What do you mean by form response? I think I know -- I know what I think that means, but tell me what you mean by that.

MS. TOOHER: It means a standard letter that you have on your computer, that you fill in the blanks to -- to provide a response under FOIL.

THE WITNESS: Parts of it are. What you have
just described as a form letter.

MS. TOOHER: And parts of it are uniquely
crafted to this response?

THE WITNESS: Correct. Obviously the number of
pages of documents, the exemptions that might apply, all
of those are things that are unique to this particular
request.

MS. TOOHER: And did you discuss this letter
with anyone else before you sent it out?

THE WITNESS: I don't recall.

MS. TOOHER: Did you discuss this response with
anyone else before you sent it out?

MR. BREZ: You mean not just the letter, the
whole response?

MS. TOOHER: The whole response.

THE WITNESS: Certainly I solicited documents
from people within the Chamber, so to that extent, yes, I
discussed the response. I don't -- I don't remember
whether I discussed anything else about the response
before it went out. I just -- I just don't remember.

MS. TOOHER: And Commission's 1 through 5, and I
apologize for jumping around, were these documents
provided to you by Mr. Dopp when he provided the other
documents with Commission's 66?

A I would have to review my files. I don't
remember off the top of my head.  

MS. TOOHER: Do you remember if these types of documents, the transportation assignments for Senator Bruno were provided by Mr. Dopp when he provided Commission's 66?

THE WITNESS: I do recall -- I do recall some documents. I don't recall if they were specific to Senator Bruno or the Lieutenant Governor or the Governor, but I recall certain travel transportation documents that looked similar to this.

I just don't recall whether they were these documents or whether -- I guess that's it, whether they were these documents.

MS. TOOHER: And the documents provided by Mr. Dopp, were they included in your responsibilities to the other FOILS, I believe it's Commission's 112?

MR. BREZ: I think we went over this before. Is this a different --

MS. TOOHER: She didn't have these documents in front of her.

MR. BREZ: Oh, these. Okay. Your question you just asked was, the stuff she got from Dopp, did she provide that?

MS. TOOHER: Correct.

MR. BREZ: But you mean did she provide this
TREISMAN

1 stuff in response to those?
2 MS. TOOHER: Right. And I don't think we
3 addressed whether she had provided the documents provided
4 by Mr. Dopp in response to Commission's 112.
5 MR. BREZ: I mean the record will speak for
6 itself, obviously. I think she did. I think that's how
7 we got around to that. And she said some of them yes,
8 some of them no. She wasn't sure about which ones, and
9 that's why we had to question where they were.
10 So let me just make sure, so she can answer
11 this. You're asking about the stuff she got from Dopp,
12 did she provide that in response to the Exhibit 112
13 packet? Or did she --
14 MS. TOOHER: Well, let's ask the first.
15 MR. BREZ: Great, and then we'll go to Exhibits
16 1 through 5.
17 MS. TOOHER: Great.
18 MR. BREZ: Great. Do you understand?
19 THE WITNESS: Yes, I think so. I don't remember
20 whether the documents that I provided in response to the
21 requests in Exhibit 112 included documents that Mr. Dopp
22 gave to me.
23 MS. TOOHER: And do you have any recollection as
24 to whether you provided documents similar to Commission's
25 1 through 5 in response to Commission's 112?
THE WITNESS: The usual caveat that I'm doing this from memory without the files in front of me, I would just say that on the face of these requests, I don't believe that I would have provided the documents in exhibits 1 through 4, because the first request asked for all flight request information forms for state aircraft submitted between January 1st, 2007 to the most recent date available.

And also asks for passenger manifests for all flights taken between 1 January 2007 to the most recent date. I did not, as far as I know, Commission's Exhibits 1 through 5 are neither flight request information forms nor passenger manifests.

With respect to the FOIL request from Mr. Walter, which is E4, Mr. Walter requested records. And I'm not quoting, because it would be long, but the important thing is that Mr. Walter is requesting only records attendant to Governor Eliot Spitzer or Lieutenant Governor David Paterson.

So again, I do not think that transportation assignment for Senator Joseph Bruno would be responsive to that request.

And with respect to Mr. Confessore's request, which is Bates Stamped E5, he asked for travel records, travel assignments and other travel documents collected by

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the State Police since January 1st, 2007.

And I believe I indicated earlier on the record that as far as I recall, I did not provide any documents in response to Mr. Confessore's request with respect -- and that was E5.

With respect to E6, I believe I indicated on the record earlier that we were unable to respond to this request because we did not have Mr. Checca's address.

MS. TOOHER: So Ms. Treisman, would it be your opinion that Commission's 1 through 4, the ground transportation records -- for the transportation records as indicated by the captions on those documents; you would not consider those to be responsive to a request for information concerning the use of the state aircraft?

MR. BREZ: I'm not sure that's what she just said.

MS. TOOHER: She can clarify.

THE WITNESS: The request asks for, quote, all flight request information forms. This is the Robin request, I think, that you're looking at?

MS. TOOHER: Mm-hmm.

THE WITNESS: Which is E3. This does not appear to me to be a flight request information form. Again, with the caveat that I don't have my response in front of me, so perhaps I made a different determination at that
But looking at the face of this document, it
does not appear to be. Mr. Robin's request asks for two
things, the flight request information form and passenger
manifests.

This does not appear to be either of those.

MS. TOOHER: And if I --

MR. BREZ: Just so we're clear, that this is

exhibits 1 through 4.

THE WITNESS: I'm sorry, yes.

MS. TOOHER: Yes. And if you were to receive a

request for information concerning use of the state

aircraft, as you sit here today would you consider

Commission's 1 through 4 documents responsive to that

request?

MR. BREZ: Is the hypothetical clear?

THE WITNESS: So the request would be, quote,

for documents concerning?

MS. TOOHER: For use of state aircraft.

THE WITNESS: For use of state aircraft? I

would probably need to get more information about these

documents.

As I indicated when we were looking at them

independently before, before I would be able to answer

that question.
MR. BREZ: Just so we're clear that these documents are Commission Exhibits 1 through 4?

MS. TOOHER: Yes. What additional information would you require in order to be able to make that determination on Commission's 1 through 4?

THE WITNESS: Again, if we -- if the request, as you say, is for documents concerning use of state aircraft, is that what it was?

MS. TOOHER: Correct.

THE WITNESS: I would just -- what's difficult about this hypothetical is normally I would know who provided these documents to me, and that might tell me something about whether they're responsive or not. And I could have a conversation with that person about where the documents came from, what they're used for, etc.

Looking at the face of the documents, they do reference use of state aircraft, to the extent that they talk about arrivals and departures from Marine Air Terminal, from the Wall Street HeliPad and the downtown HeliPort, for example.

My understanding is that those things -- those are places that state aircraft fly to and from, but I would want to confirm that understanding, so that I could confirm that, indeed, this does relate to state travel --
the use of state aircraft, I'm sorry.

MS. TOOHER: State --

THE WITNESS: As opposed to some other type of aircraft, for example.

MS. TOOHER: Well, they specifically indicate, or at least Commission's -- I think Commission's 4 indicates ground transportation.

If these documents are concerning the ground transportation, would you consider them to be responsive to a request for the use of state aircraft?

MR. BREZ: You're just reading from the header of Commission's 4?

MS. TOOHER: Correct.

MR. BREZ: Not the words in Commission's 4?

MS. TOOHER: Correct.

MR. BREZ: Because I think she was reading from the text of Commission's 4.

THE WITNESS: Again, that was one reason why I would probably want a little more information, because the header said ground transportation, but I note that the text of the document references the West 30th Street HeliPad.

And the, I guess that's it. Both of those are West 30th Helipad, which at least suggests to me that it also might have -- might be a document, quote, concerning
MS. TOOHER: Thank you. I think for the moment --

MS. SULLIVAN: One more question.

Q Other than your attorney, have you spoken to anyone about your testimony prior to coming here today?

A I have spoken to my husband. And I have spoken to my boss, to the extent of letting him know where I am today.

MS. TOOHER: Well, we appreciate very much your coming in. Nothing further.

(Whereupon the proceedings in the above-entitled matter were concluded at 1:32 p.m.)

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I, ____________________, have read the foregoing record of my testimony taken at the time and place noted in the heading hereof and do hereby acknowledge: (Check one)

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Subscribed and sworn to before me
this _____ day of ____________, 200__.

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I, SUZANNE T. HARRINGTON, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose deposition is hereinbefore set forth was duly sworn by me and that the within transcript is a true and accurate record to the best of my knowledge and ability.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand.

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Suzanne T. Harrington,
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