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STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

IN THE MATTER OF:
AN INVESTIGATION INTO THE
ALLEGED MISUSE OF RESOURCES OF
THE DIVISION OF STATE POLICE

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

TREISMAN

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

3

4 FOR THE COMMISSION:

5

6 HERBERT TEITELBAUM, Executive Director
7 Commission on Public Integrity
8 540 Broadway, Albany, NY 12207

9 JOAN P. SULLIVAN, Associate Counsel
10 Commission on Public Integrity
11 540 Broadway, Albany, NY 12207

12 MAEVE M. TOOHER, Investigative Counsel
13 Commission on Public Integrity
14 540 Broadway, Albany, NY 12207

15 ROBERT J. SHEA, Associate Confidential Inv.
16 Commission on Public Integrity
17 540 Broadway, Albany, NY 12207

14

15

16 FOR THE INTERVIEWEE:

17

18 KIRKLAND & ELLIS
19 Citigroup Center
20 153 East 53rd Street
New York, NY 10022

20

21

BY: ZACHARY S. BREZ, ESQ.

22

23

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

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(518) 861-3600

TREISMAN

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

4 BY MS. SULLIVAN:

5 Q Ms. Treisman, could you state your name for the
6 record?

7 A Mariya Seacrest Treisman.

8 Q Would you spell that?

9 A M-a-r-i-y-a. Seacrest, S-e-a-c-r-e-s-t.
10 Treisman, T-r-e-i-s-m-a-n.

11 Q And are you here voluntary today?

12 A Yes.

13 Q And are you accompanied by Counsel?

14 A Yes.

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

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

21 Q Ms. Treisman, where are you employed?

22 A In the Governor's Office, also known as the
23 Executive Chamber.

24 Q And how long have you been employed there?

25 A Since January 1st, 2007.

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1 Q And what is your position?

2 A Assistant Counsel to the Governor.

3 Q And can you tell us what your primary
4 responsibilities are as Assistant Counsel to the Governor?

5 A I, um -- Counsels' Office is divided among
6 several attorneys. And each of us is responsible for
7 different policy areas and, specifically, for the
8 different agencies.

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

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

14 Q And as the FOIL Officer for the Executive
15 Chamber, could you tell us what your responsibilities
16 entail?

17 A When a FOIL request is submitted to me, I review
18 the request. I ask members of the Executive Chamber for
19 any documents that might be responsive to the request.

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

23 Q And who do you report to?

24 A At Counsels' Office we have a First Assistant
25 Counsel to the Governor, Terryl Brown Clemons.

TREISMAN

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 --

TREISMAN

1 A Yes.

2 Q Do you acknowledge the request?

3 A I -- I acknowledge the request pursuant to the
4 requirements of the Public Officers Law.

5 Q And how do you do that, by phone call or by
6 letter, by e-mail?

7 A I believe the FOIL, as the Public Officers Law
8 stated, it needs to be in writing. So we respond by
9 writing.

10 Q And is there a time period in which you need to
11 respond to that?

12 A I believe this is all in the Public Officers
13 Law, and I -- I hesitate to cite the law without looking
14 at it, but I can tell you that I, you know, follow the
15 time periods that are set forth in the statute.

16 Q Aside from the Public Officers Law, does the
17 Executive Chamber have any written policy?

18 A There are published regulations in the
19 N.Y.C.R.R.

20 Q And could you tell us typically who you receive
21 FOIL requests from?

22 A No, I don't think there's a typical.

23 Q Typical?

24 A (Witness nodded head.)

25 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
3 FOIL requests?

4 A I'm hesitating only because it's an impersonal
5 process and, umm --

6 Q Is a case number opened if you get a FOIL?

7 A We start a file for every FOIL request.

8 Q Could you explain that a little further?

9 A I'm not sure I know what you're looking for.

10 Q You open a file?

11 A Correct.

12 Q And then you keep the correspondence in the
13 file. And is there some sort of a procedure that would
14 notify you that it would -- that the time is running that
15 you would have to answer the FOIL by?

16 A Yes, I guess, is the answer.

17 Q Yes?

18 A There is a record keeping procedure that we have
19 in place.

20 Q How?

21 A To track when the FOIL requests come in and --

22 Q Who?

23 A And when I need to --

24 Q Who does that?

25 A I do it, and I ask my assistant for help with

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1 that.

2 Q Who is your assistant?

3 A Jeanne, J-e-a-n-n-e. Engwer, E-n-g-w-e-r.

4 Q Could you approximate how many FOIL requests you
5 have received since you started in January?

6 A I have -- I hesitate to approximate that. I
7 don't know the exact number.

8 MR. TEITELBAUM: Was it more than a hundred?

9 THE WITNESS: I don't think so, but I'm not
10 sure.

11 MR. TEITELBAUM: Between 50 and 100?

12 THE WITNESS: Again, I don't know the exact
13 number.

14 MR. TEITELBAUM: I'm not asking for the exact
15 number. I'm asking for an approximation.

16 THE WITNESS: And again, I hesitate to
17 approximate.

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

20 MR. BREZ: If you have a guess.

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

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

25 Q If a citizen or a reporter wants to request

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1 documents, who would the request be directed to?

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

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

7 A They might.

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

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

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

17 MS. SULLIVAN: A FOIL request.

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

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

25 Q Is it the procedure within the Chamber that if a

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1 FOIL request comes in, it is handled by you?

2 A That is the standard procedure, yes.

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

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

9 Q Are they obligated to forward it to you?

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

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

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

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

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

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

25 A I -- again, I don't remember saying that.

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1 MR. BREZ: I don't either, actually, but --

2 Q Do FOIL requests have to be in writing?

3 A Again, I don't have the Public Officers Law in
4 front of me, so I don't want to, um -- I don't want to
5 guess about what the law says.

6 MR. TEITELBAUM: What's your understanding?

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

9 Q Do you accept oral requests?

10 A I do not.

11 Q You do not?

12 A It's not my --

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

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

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

21 A It depends. For example -- I'm sorry. If
22 someone calls me and says, I'm making a request under the
23 Freedom of Information Law, I'll ask them to put that in
24 writing.

25 MS. TOOHER: What if someone else in the

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1 Executive Chamber indicated they had received an oral
2 request?

3 THE WITNESS: An oral FOIL request?

4 MS. TOOHER: Oral FOIL request, yes.

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

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

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

15 Q Are there any other standards in --

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

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

24 And I think it's Ms. Treisman's view, and it's
25 an accurate one, that in making that decision about

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1 reading the statute, comparing it to the request, piecing
2 the two of them together and deciding what the floor
3 provides pursuant to a statute, that's a legal statute.

4 She is acting as an attorney and there is some
5 combination of attorney work product. And depending on
6 the communication she has with her client, the Executive
7 Chamber, attorney client communication.

8 And so I think the mental process that she goes
9 through of deciding what's responsive and what isn't under
10 the FOIL law with a particular request she gets, touches
11 on both attorney work product and attorney client
12 communications.

13 Please note that we're stepping outside. I
14 assume we're going to go off the record.

15 (Discussion off the record.)

16 MR. BREZ: While we were off the record,
17 Mr. Teitelbaum and I had a conversation about the nature
18 of the attorney work product and the attorney client
19 issues that we were raising.

20 I think we came to some general understanding
21 we're going to walk through these questions slowly.

22 MR. TEITELBAUM: One at a time.

23 MR. BREZ: One at a time. And Ms. Treisman is
24 going to be as helpful as possible. And I see you have
25 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
3 talking about when you received a FOIL request, if you
4 could help us understand what are the standards that you
5 look at in determining what documents will be released
6 pursuant to that request?

7 A I look at the statute and the regulations,
8 again, that the Executive Chamber has promulgated. And
9 based on the standard and the exemptions in the statute, I
10 make a decision about both what's responsive to the
11 request and what might be exempt under the statute.

12 Q And you're referring to Section 87 of the Public
13 Officers Law?

14 A That sounds right, but I don't have it in front
15 of me, so --

16 Q I would like to show it to you.

17 A That would be great.

18 Q If you could take a look at that and point out
19 what are the exemptions that you would look at in
20 determining what documents would be disclosed?

21 MR. BREZ: And make sure you read the section --
22 just for the record, I want to note that they've placed in
23 front of Ms. Treisman, a section -- a book open to Section
24 87 of the Freedom of --

25 THE WITNESS: Public Officers Law.

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1 MR. BREZ: -- Information Law.

2 THE WITNESS: Public Officers Law.

3 MR. BREZ: Correct, thanks.

4 (Whereupon the witness reviewed the Public
5 Officers Law.)

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

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

10 MS. SULLIVAN: It is the same.

11 MR. TEITELBAUM: Off the record.

12 (Discussion off the record.)

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

18 MS. TOOHER: Sure.

19 (Whereupon the witness continued to review
20 the Section.)

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

23 MS. SULLIVAN: Could you read it back?

24 (The question was read back.)

25 THE WITNESS: "Section 87, Subdivision (2)

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1 states that each agency shall, in accordance with its
2 published rules, make available for public inspection and
3 copying all records, except that such agency may deny
4 access to records or portions thereof that -- and then
5 that subdivision goes on to list a number of exemptions
6 for which an agency may deny access to records.

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

9 A Sure.

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

11 THE WITNESS: True.

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

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

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

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

24 A Or a portion of a document, correct.

25 Q And how would you make that determination?

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1 Would you confer with Counsel?

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

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

8 THE WITNESS: In some instances, yes.

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

11 THE WITNESS: It depends on the circumstances.
12 At this -- in a typical situation, it might be the person
13 who had control of the document. And it might also be
14 Terryl Brown Clemons in our office.

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

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

24 THE WITNESS: The person who's provided the
25 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

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1 Executive Chamber and became the FOIL Officer?

2 THE WITNESS: Yes.

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

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

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

10 THE WITNESS: Yes.

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

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

15 MR. TEITELBAUM: Do the best you can.

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

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

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

25 MR. TEITELBAUM: Was the procedure reduced to

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1 writing? And when I say writing, I mean e-mails or hard
2 copy?

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

5 MR. TEITELBAUM: Correct.

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

8 MR. TEITELBAUM: Precisely.

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

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

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

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

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

21 MR. BREZ: A FOIL request?

22 MR. TEITELBAUM: Yeah.

23 MR. BREZ: Yeah.

24 THE WITNESS: I don't know if others in the
25 Executive Chamber knew about that or not.

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1 MR. TEITELBAUM: Well, would Terryl Brown
2 Clemons know?

3 THE WITNESS: I believe so.

4 MR. TEITELBAUM: And David Nocenti?

5 THE WITNESS: I believe so.

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

8 THE WITNESS: I don't know.

9 MR. TEITELBAUM: Richard Rifkin?

10 THE WITNESS: I don't know.

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

14 THE WITNESS: Yes.

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

18 THE WITNESS: Yes.

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

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

24 But as I said before, my responsibility would be
25 that the Executive Chamber does not possess or maintain a

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1 record that would be responsive to this request.

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

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

13 THE WITNESS: Press office, Communications
14 office.

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

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

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

21 THE WITNESS: Okay, fair enough.

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

25 THE WITNESS: If they have -- I'm hesitating

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1 because I think the question presumes a couple of things.

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

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

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

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

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

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

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

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

25 MR. TEITELBAUM: What's your understanding of

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

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

4 MR. TEITELBAUM: Sure.

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

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

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

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

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

18 THE WITNESS: Right.

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

21 THE WITNESS: If it's a request in writing
22 generally and citing the Freedom of Information Law.

23 Some individuals, you know, may say Freedom of
24 Information Act, which is the federal law. I would accept
25 that as a FOIL request as well. I'm not so rigid as to

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1 require precisely stating the statute.

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

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

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

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

16 THE WITNESS: No.

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

20 THE WITNESS: No, not by me.

21 MS. TOOHER: Are you aware of --

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

25 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 Odatto 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

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1 not asking about that. You can correct me, but you're
2 interested in times outside of with Counsel that she's
3 reviewed this document, is that --

4 MS. SULLIVAN: Yes.

5 MR. BREZ: Okay.

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

9 MR. TEITELBAUM: Sure.

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

12 (Discussion off the record.)

13 MR. TEITELBAUM: Do you remember the question?

14 THE WITNESS: Could you repeat the question?

15 (The question was read back.)

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

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

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

24 Q So is it fair to say that Mr. Dopp did not
25 forward Commission's 66 to you on or about the time of the

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1 e-mail was sent, June 27th?

2 A As far as I recall.

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

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

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

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

14 THE WITNESS: Correct.

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

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

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

21 MR. TEITELBAUM: Sure.

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

25 One is in connection with me appearing for

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1 today. Second is --

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

3 MR. BREZ: Yes.

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

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

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

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

15 (Brief pause)

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

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

25 Outside of that context, documents that are

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1 reviewed in connection with preparation for testimony are
2 the identification, and listing of those documents is a
3 privileged occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. BREZ: The testimony.

21 THE WITNESS: This testimony.

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

24 MR. TEITELBAUM: When you say, Ms. Treisman,
25 when you say any involvement, I'm taking that literally.

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1 You mean any involvement that you've had in an
2 investigation is protected by attorney client privilege?

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

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

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

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

20 MR. BREZ: She has not.

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

24 MR. BREZ: So let's go back to that. If you
25 want to ask the date --

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1 MR. TEITELBAUM: That's all I'm asking. That's
2 what when means, when.

3 MR. BREZ: Okay. Well --

4 MR. TEITELBAUM: We'll take it one at a time.
5 When -- when did you first see?

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

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

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

11 MS. SULLIVAN: Sure.

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

14 (Discussion off the record.)

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

17 THE WITNESS: When did I see this document?

18 MR. TEITELBAUM: For the first time?

19 THE WITNESS: For the first time.

20 MR. TEITELBAUM: Yes.

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

25 And it was in a privileged -- in connection with

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1 attorney client privileged communication.

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

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

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

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

12 MR. TEITELBAUM: Who showed it to you?

13 THE WITNESS: Um -- is that --

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

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

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

20 THE WITNESS: As far as -- if the first time
21 that I saw this was the incident that I'm remembering?
22 No, no one was with Mr. Dopp.

23 MR. TEITELBAUM: And your testimony is that the
24 context of that was in connection with a response to a
25 FOIL request?

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1 THE WITNESS: Correct.

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

4 MR. TEITELBAUM: Not the FOIL.

5 THE WITNESS: Subsequent FOIL requests.

6 MR. BREZ: The subsequent --

7 THE WITNESS: Correct.

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

10 MR. BREZ: Correct.

11 THE WITNESS: Correct.

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

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

16 MR. TEITELBAUM: This second Odatto FOIL request.

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

18 (Whereupon the witness was handed Exhibit
19 88 to review.)

20 MR. TEITELBAUM: Off the record.

21 (Discussion off the record.)

22 MR. TEITELBAUM: So was it in connection with
23 88?

24 THE WITNESS: I believe -- and I don't know if
25 you have these records, but I believe there may have also

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1 been other FOIL requests for travel related documents.

2 I don't recall if those requests were before
3 July 10th, which is the date on Exhibit 88 or after.

4 MR. TEITELBAUM: But to your recollection, were
5 they Odatto requests?

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

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

12 THE WITNESS: Sure.

13 MR. BREZ: Great.

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

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

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

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

21 (Discussion off the record.)

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

23 THE WITNESS: Okay. What was the question?

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

25 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.

11 MR. BREZ: Earlier, about July 10th. Okay.

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. Odatto is seeking the
24 material for calendar year 2007 and the date of his
25 request is June 27th.

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

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

5 Q So that would include documents from January
6 1st, 2007 until June 27, 2007?

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

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

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

16 A Yes, with the requester.

17 Q To clarify?

18 A Correct.

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

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

24 MS. SULLIVAN: Yes.

25 A The request asked for records identifying the

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1 use of state aircraft by Governor Eliot Spitzer,
2 Lieutenant Governor David Paterson, Comptroller Thomas
3 DiNapoli, Senate Majority Leader Joseph Bruno, Assembly
4 Speaker Sheldon Silver, Assembly Minority Leader James
5 Tedisco, and Senate Minority Leader Malcolm Smith.

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

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

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

18 A Oh, thank you.

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

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

23 THE WITNESS: Um --

24 MR. BREZ: Just so I'm clear, are you suggesting
25 its two requests in one? When you say that request, are

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1 you referring to all of 66 or just to the portion you just
2 read?

3 MS. SULLIVAN: The portion I just read.

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

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

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

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

16 MS. TOOHER: Would you consult with someone?

17 THE WITNESS: I might.

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

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

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

25 You know, this is seeking documents also from

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

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

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

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

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

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

18 THE WITNESS: Travel documents concerning
19 Senator Bruno?

20 MS. TOOHER: Yes.

21 THE WITNESS: Not -- I don't think on my initial
22 sort of solicitation for documents. But whenever I
23 solicit documents, I'm always asking if there's anyone
24 else who the person knows who might have responsive
25 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?

9 THE WITNESS: No.

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

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1 shot.

2 MR. TEITELBAUM: Sure.

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

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

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

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

14 MR. TEITELBAUM: Miss Turner and --

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

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

21 And I would provide any responsive documents
22 that were not exempt from disclosure and, if necessary,
23 would make redactions to documents that were responsive,
24 but included certain material that was exempt from
25 disclosure.

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1 MR. TEITELBAUM: And in describing what you
2 would have done, is that to the best of your knowledge
3 what the protocol was in the Executive Chamber with regard
4 to FOIL requests at or around June 27, 2007?

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

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

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

14 MR. TEITELBAUM: Well, you already testified
15 that you consulted with others with regard to certain
16 things that should and shouldn't be done, so I'm just
17 trying to -- it's a very -- a very benign question.

18 I just want to know if what you described as
19 something that -- if one of your colleagues in the
20 Executive Chamber looked at what you had done, they would
21 have said, oh yeah, that's what we do. That's what we're
22 supposed to do here.

23 It's a simple question. And if there is a
24 difficulty with the question, let me know, and I'll ask a
25 different kind of question.

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1 THE WITNESS: I think the difficulty is I think
2 the Executive Chamber has, and I don't know the exact
3 number, I want to say between 200 and 300 employees. I
4 can't say what all of their understanding is with respect
5 to the FOIL protocols. And nor can I say what each of
6 them would have done in that circumstance.

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

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

10 MR. BREZ: I think she gave you that.

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

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

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

19 THE WITNESS: Not to my knowledge.

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

23 MR. BREZ: I'm just --

24 MR. TEITELBAUM: Now let's not pollute the
25 record.

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TREISMAN

1 MR. BREZ: I'm looking up. You can answer that.

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

3 THE WITNESS: The question was, has --

4 MR. TEITELBAUM: Has the subject --

5 THE WITNESS: The subject that it wasn't

6 reviewed by any lawyer --

7 MR. TEITELBAUM: Any lawyer in the Executive

8 Chamber, along the Executive Chamber personnel?

9 MR. BREZ: Just --

10 MR. TEITELBAUM: Let me ask about your knowledge

11 obviously.

12 THE WITNESS: I believe it has, yes.

13 MR. TEITELBAUM: Can you tell us when that

14 subject first came up, to your knowledge?

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

16 THE WITNESS: I don't know.

17 MR. TEITELBAUM: Was that subject discussed, to

18 your knowledge, with Mr. Dopp?

19 THE WITNESS: I don't know.

20 MR. TEITELBAUM: Did you have that discussion,

21 that subject -- did you discuss that subject with Mr.

22 Dopp?

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

24 THE WITNESS: I guess I just wanted to go back

25 to what the subject is that again -- I think, if I

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1 understand it, to make sure we have the same
2 understanding.

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

5 MR. TEITELBAUM: (Nodded head.)

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

9 MR. BREZ: Yes.

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

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

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

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

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

23 The Odatto article came out on July 1st, which
24 was a Sunday. Did you have your -- did you receive 66
25 from Mr. Dopp in that week that followed the Odatto

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1 article, to the best of your recollection?

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

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

7 THE WITNESS: Fair to say.

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

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

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

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

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

20 MR. TEITELBAUM: Yes.

21 THE WITNESS: Um --

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

23 THE WITNESS: Yes.

24 (Discussion off the record.)

25 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,
17 the only conversation -- the only subject of the
18 conversation was responding to FOIL requests that predated
19 the second OdatO request.

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

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

25 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
2 call him to come to your office or did he just walk in
3 with 66? How did it happen?

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

6 THE WITNESS: Okay. To the best of my
7 recollection I had asked for -- I had asked some of those
8 individuals that I listed before for documents that would
9 be responsive to the FOIL requests that I had received.

10 In the course of asking for those documents, I
11 became aware that Mr. Dopp might also have responsive
12 documents, and I asked him to provide me with documents
13 that would be responsive to those requests.

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

16 THE WITNESS: Yes.

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

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

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

24 MR. TEITELBAUM: Did he tell you at that point
25 that these were the documents that he gave to Odatto in

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1 response to 66?

2 THE WITNESS: Can I answer that?

3 MR. BREZ: Yes.

4 THE WITNESS: Yes.

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

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

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

12 MR. BREZ: Other than 66 also?

13 MR. TEITELBAUM: Correct.

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

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

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

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

21 MR. TEITELBAUM: Yes.

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

25 MR. TEITELBAUM: So this meeting obviously

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1 occurred before he was suspended without pay; correct?

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

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

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

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

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

15 MR. BREZ: By these requests --

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

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

25 MR. TEITELBAUM: Just so we're clear on what my

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1 question is. To be precise, when I asked you whether you
2 had sent the documents that Dopp gave you, when he gave
3 you 66, to other persons who had given the Executive
4 Chamber FOIL requests, including 112, I don't mean the
5 precise documents, but I mean copies of such documents as
6 well.

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

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

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

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

22 THE WITNESS: Yes.

23 MR. TEITELBAUM: For what purpose?

24 THE WITNESS: For the purpose of responding to
25 the FOIL requests that I had received.

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TREISMAN

1 MR. TEITELBAUM: And in reviewing those
2 documents for that purpose, did you make a determination
3 as to whether any of the information contained in those
4 documents should be redacted?

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

8 MR. TEITELBAUM: Correct.

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

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

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

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

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

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

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1 that you were looking at?

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

7 MR. TEITELBAUM: I understand. Did the subject
8 matter of the redactions, of all or part of any of the
9 documents that Dopp gave to you, and when he gave to you
10 66, come up?

11 THE WITNESS: Come up?

12 MR. BREZ: Say it again.

13 MR. TEITELBAUM: Did that subject come up?

14 THE WITNESS: When?

15 MR. TEITELBAUM: At any time?

16 THE WITNESS: With who?

17 MR. BREZ: Wait, talking to Dopp?

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

20 MR. BREZ: Oh.

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

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

25 MR. TEITELBAUM: That subject.

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1 MR. BREZ: -- redacting -- the redaction of
2 those documents.

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

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

8 MR. TEITELBAUM: Yes.

9 THE WITNESS: I don't recall.

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

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

15 MR. BREZ: By that he means 112.

16 MR. TEITELBAUM: That's right.

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

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

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

23 With respect to the fourth one, which is Bates
24 Stamped E6, I believe -- I believe I was unable to respond
25 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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1 And I do not believe that I sent documents in
2 response to the Confessore request.

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

6 MR. BREZ: You mean on her?

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

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

12 MR. TEITELBAUM: Are those in your office?

13 THE WITNESS: Yes.

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

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

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

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

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

4 Q Did you have any conversations with Mr. Odatto
5 about the contents of this letter?

6 A No.

7 Q And you stated that you have conducted a
8 thorough review of the files. Could you explain that
9 review to us?

10 A It's the review that I've discussed earlier in
11 testimony, which is I ask anyone in the Chamber who might
12 have responsive -- who I believe might have responsive
13 documents, whether they have any.

14 I collect those documents. I also ask if
15 there's anyone else in the Chamber that those people are
16 aware of that might have responsive documents and collect
17 those documents.

18 I then review them pursuant to the Freedom
19 of Information Law and make a conclusion about what's
20 responsive.

21 Q And your review was limited to the Executive
22 Chamber, correct?

23 A Yes.

24 Q It did not attend to other agencies, correct?

25 A No.

TREISMAN

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

6 A Correct.

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

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

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

15 MS. SULLIVAN: Sure.

16 THE WITNESS: That would be great.

17 MR. BREZ: Can she go take a bathroom break?

18 MR. TEITELBAUM: Oh, sure.

19 (Discussion off the record.)

20 Q Mariya, I think we were looking at Commission's
21 91, and I just handed you Commission's 92.

22 A Yes.

23 Q Could you explain what Commission's 92 is?

24 (Whereupon the witness reviewed the
25 documents before her.)

TREISMAN

1 A Yes, this appears to be a large number of
2 documents -- admittedly my math is not very good, but
3 Bates Stamped E352 through E385, and there are a number of
4 things here.

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

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

11 There are documents with the heading,
12 Flight Request Information.

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

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

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

TREISMAN

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

3 A It appears to be.

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

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

9 MR. BREZ: Want to see this?

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

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

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

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

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

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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. Odatto, 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.

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1 And as indicated in the letter to
2 Mr. Odatto, Exhibit 91, I found certain portions to be
3 exempt pursuant to Public Officers Law Section 87(2)(b) or
4 (f).

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

7 A I believe I did, yes.

8 Q And could you tell us who that was?

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

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

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

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

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

25 A I think as we start to get into the specifics of

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1 what I look for, this may get into work product, so I
2 hesitate to answer. If you want to be more specific, I
3 can try.

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

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

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

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

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

22 And as indicated in my letter to Mr.
23 Odatto, Exhibit number 91, I concluded that certain
24 information was exempt pursuant to Public Officers Law,
25 Section 87(2)(b) or (f).

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1 Q It appears from 364 that you redacted the
2 contact information for Mrs. Leslie King; is that correct?

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

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

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

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

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

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

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

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1 THE WITNESS: Right.

2 MR. TEITELBAUM: We understand that.

3 MR. BREZ: Okay.

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

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

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

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

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

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

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

23 MS. TOOHER: On Bates 364, the contact
24 information, the office contact indicates the contact name
25 and phone number.

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1 THE WITNESS: Mm-hmm.

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

4 THE WITNESS: Mm-hmm.

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

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

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

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

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

23 THE WITNESS: Yes.

24 MS. TOOHER: And although I understand that you
25 can't make a determination in looking at other similar

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1 schedules that we have seen, that has typically been the
2 investigator's name.

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

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

8 MR. TEITELBAUM: No, it could be both.

9 MS. TOOHER: Yes.

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

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

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

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

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

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

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

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

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

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

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

14 THE WITNESS: I can't remember.

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

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

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

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

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

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

25 MR. TEITELBAUM: Well, this is the Governor's

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1 schedule. And it references: Event, notes, status, time
2 and place. Does that help you with the kind of
3 information that's there?

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

8 MR. TEITELBAUM: Right.

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

11 MR. TEITELBAUM: I understand.

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

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

16 THE WITNESS: Correct.

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

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

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

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

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1 can't get the information.

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

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

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

16 (Discussion off the record.)

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

23 MR. TEITELBAUM: Let's start there.

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

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1 there.

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

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

6 MR. TEITELBAUM: On 365?

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

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

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

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

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

24 MR. TEITELBAUM: How about flight information?
25 Look at 365 in the Wednesday, June 13th. It says

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1 Continental flight, and then there's a redaction.

2 It seems to me that that's probably the flight
3 information, wouldn't you think?

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

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

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

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

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

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

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

25 THE WITNESS: That would make sense, yes.

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1 MR. TEITELBAUM: And that's been redacted for
2 privacy reasons?

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

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

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

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

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

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

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

23 THE WITNESS: Again, it may or may not be the
24 last name. It could have been Sonya was just a phone
25 number.

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1 MR. TEITELBAUM: But it's contact information?

2 THE WITNESS: Yes, I believe so. And yes, that
3 would be redacted pursuant to Public Officers Law Section
4 87(2)(b).

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

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

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

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

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

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

25 But yes, for my purposes, I was gathering the

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1 information to do the analysis under FOIL.

2 MR. TEITELBAUM: And why did you feel it was
3 appropriate to contact O'Byrne to elicit the information
4 that you elicited?

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

9 MR. TEITELBAUM: What kinds of questions did you
10 ask him which assisted you?

11 THE WITNESS: I'm not sure I remember the
12 specific questions.

13 MR. TEITELBAUM: Generally, if you can't
14 remember specifically.

15 THE WITNESS: Well, the one -- the issue I
16 remember most clearly was the question of the
17 investigator.

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

21 MR. TEITELBAUM: What did he tell you?

22 MR. BREZ: Before you answer that --

23 THE WITNESS: Yes.

24 MR. BREZ: We're going to step out in the hall
25 for a second.

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1 MR. TEITELBAUM: You're claiming privilege?

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

5 (Discussion off the record.)

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

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

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

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

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

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1 So the substance of the conversations between
2 her --

3 MR. TEITELBAUM: That question, I think, is
4 going to have to be determined by somebody other than the
5 people in this room.

6 MR. BREZ: Fair enough.

7 MR. TEITELBAUM: Because that's a very very
8 broad application of the privilege.

9 MR. BREZ: I couldn't disagree with you more
10 about the nature of the broadness of the application, but
11 I agree with you that it's a determination that, if you
12 choose to push it, will have to be made by someone outside
13 this room.

14 It's certainly not being made by anyone on this
15 side, that being me and Ms. Treisman.

16 MR. TEITELBAUM: I understand. I understand.
17 Did you, in reviewing a document subject to a FOIL
18 request, routinely redact the identity of an investigator?

19 THE WITNESS: Again, I analyze each request
20 independently, so I don't have a set of rules by which I
21 decide what to redact and not redact. I follow the Public
22 Officers Law.

23 MR. TEITELBAUM: Could you read back my question
24 please?

25 (The question was read back.)

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1 MR. BREZ: Do you have anything else to add to
2 your answer, other than what you just did?

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

8 MR. BREZ: Great.

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

12 MR. BREZ: All right.

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

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

18 THE WITNESS: I don't -- I don't know how to
19 answer that question, because I don't know how many
20 documents have investigators listed on them.

21 I get FOIL requests for all kinds of different
22 documents, very few of which I believe actually have
23 investigators on them.

24 MS. TOOHER: Do you do that on schedules?

25 MR. BREZ: What's that?

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1 MS. TOOHER: Do you redact the names of the
2 investigators on schedules routinely?

3 THE WITNESS: I --

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

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

8 MR. BREZ: We're talking about schedules.

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

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

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

23 If you look at the Governor's schedules here,
24 and again we don't know what the information that's been
25 redacted, but I don't see anything that indicates an

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1 investigator's name, so I'm, again, not sure that it comes
2 up enough to say whether it would be a routine
3 determination or not.

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

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

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

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

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

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

22 MR. BREZ: I'm just going to caution you to be
23 careful in your response, not to provide the machinations
24 of what I would call in work product, in your head, about
25 how you analyze that statute.

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1 Barring that, you're free to answer the rest of
2 it.

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

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

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

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

16 THE WITNESS: I don't know.

17 MR. TEITELBAUM: You can't recall any?

18 THE WITNESS: I don't know.

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

21 MR. BREZ: She answered your question twice.

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

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1 MR. BREZ: Just say yes or no.

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

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

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

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

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

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

16 MR. BREZ: Yeah, you're --

17 THE WITNESS: You asked for circumstances.

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

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

25 MR. TEITELBAUM: Right.

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

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

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

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

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

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

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

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

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

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

20 MR. BREZ: Considered by her?

21 MR. TEITELBAUM: By the Chamber.

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

24 THE WITNESS: I'm not sure what you mean by
25 important.

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1 MR. TEITELBAUM: Worthy of particular attention.

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

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

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

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

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

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

17 MR. TEITELBAUM: Yes, or politically sensitive.

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

21 MR. TEITELBAUM: That was the June 27th Odatto
22 request?

23 THE WITNESS: Correct. I don't know why that
24 didn't come to me, so I don't know if it fits into the
25 scenario that you've presented, but --

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1 MR. TEITELBAUM: But other than that, other than
2 that FOIL request?

3 THE WITNESS: Not that I'm aware of.

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

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

7 MR. BREZ: This is 4, you say?

8 MS. SULLIVAN: Yes.

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

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

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

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

19 MS. SULLIVAN: No.

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

22 MS. SULLIVAN: Yes.

23 MR. BREZ: Okay.

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

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1 Executive Chamber.

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

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

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

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

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

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

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

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

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

25 THE WITNESS: I do.

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

3 Q It's in the middle of the document.

4 A And I see it.

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

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

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

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

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

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

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

24 A I may have.

25 Q Would you have conferred with anyone from the

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1 Senator's office?

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

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

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

10 MS. TOOHER: (Nodded head.)

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

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

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

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

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

25 MS. TOOHER: And looking at Commission's Exhibit

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1 2, same question.

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

4 THE WITNESS: I'm going to say same response.
5 Yes, same response.

6 MS. TOOHER: Exhibit 3?

7 THE WITNESS: Same response.

8 MS. TOOHER: Exhibit 4?

9 THE WITNESS: Same response.

10 MS. TOOHER: And Exhibit 5?

11 THE WITNESS: Same response.

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

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

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

24 MS. TOOHER: (Nodded head.)

25 Q In Commission's Exhibit 5, there is information

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1 at the top, helicopter, and then an N430NY, which appears
2 to be the tail number of the chopper. Would that be
3 information that you would redact?

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

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

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

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

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

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

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

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

25 THE WITNESS: Parts of it are. What you have

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1 just described as a form letter.

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

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

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

10 THE WITNESS: I don't recall.

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

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

15 MS. TOOHER: The whole response.

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

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

25 A I would have to review my files. I don't

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1 remember off the top of my head.

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

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

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

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

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

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

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

24 MS. TOOHER: Correct.

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

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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?

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1 THE WITNESS: The usual caveat that I'm doing
2 this from memory without the files in front of me, I would
3 just say that on the face of these requests, I don't
4 believe that I would have provided the documents in
5 exhibits 1 through 4, because the first request asked for
6 all flight request information forms for state aircraft
7 submitted between January 1st, 2007 to the most recent
8 date available.

9 And also asks for passenger manifests for all
10 flights taken between 1 January 2007 to the most recent
11 date. I did not, as far as I know, Commission's Exhibits
12 1 through 5 are neither flight request information forms
13 nor passenger manifests.

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

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

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

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1 the State Police since January 1st, 2007.

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

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

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

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

17 MS. TOOHER: She can clarify.

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

21 MS. TOOHER: Mm-hmm.

22 THE WITNESS: Which is E3. This does not appear
23 to me to be a flight request information form. Again,
24 with the caveat that I don't have my response in front of
25 me, so perhaps I made a different determination at that

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1 time.

2 But looking at the face of this document, it
3 does not appear to be. Mr. Robin's request asks for two
4 things, the flight request information form and passenger
5 manifests.

6 This does not appear to be either of those.

7 MS. TOOHER: And if I --

8 MR. BREZ: Just so we're clear, that this is
9 exhibits 1 through 4.

10 THE WITNESS: I'm sorry, yes.

11 MS. TOOHER: Yes. And if you were to receive a
12 request for information concerning use of the state
13 aircraft, as you sit here today would you consider
14 Commission's 1 through 4 documents responsive to that
15 request?

16 MR. BREZ: Is the hypothetical clear?

17 THE WITNESS: So the request would be, quote,
18 for documents concerning?

19 MS. TOOHER: For use of state aircraft.

20 THE WITNESS: For use of state aircraft? I
21 would probably need to get more information about these
22 documents.

23 As I indicated when we were looking at them
24 independently before, before I would be able to answer
25 that question.

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

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

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

9 MS. TOOHER: Correct.

10 THE WITNESS: I would just -- what's difficult
11 about this hypothetical is normally I would know who
12 provided these documents to me, and that might tell me
13 something about whether they're responsive or not.

14 And I could have a conversation with that person
15 about where the documents came from, what they're used
16 for, etc.

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

22 My understanding is that those things -- those
23 are places that state aircraft fly to and from, but I
24 would want to confirm that understanding, so that I could
25 confirm that, indeed, this does relate to state travel --

TREISMAN

1 the use of state aircraft, I'm sorry.

2 MS. TOOHER: State --

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

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

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

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

13 MS. TOOHER: Correct.

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

15 MS. TOOHER: Correct.

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

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

23 And the, I guess that's it. Both of those are
24 West 30th Helipad, which at least suggests to me that it
25 also might have -- might be a document, quote, concerning

TREISMAN

1 use of state aircraft.

2 MS. TOOHER: Thank you. I think for the
3 moment --

4 MS. SULLIVAN: One more question.

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

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

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

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

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J U R A T

STATE OF)
COUNTY OF)

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)

() That it is a true and correct transcript
of same

() With the exceptions noted in the attached
errata sheet, it is a true and correct
transcript of same

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

Notary Public

My commission expires: _____.

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C E R T I F I C A T E

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.

Suzanne T. Harrington,
Shorthand Reporter