STATE OF NEW YORK
STATE ETHICS COMMISSION
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In the matter of
An Investigation into the Alleged
Misuse of Resources of the Division
of State Police
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Alfred E. Smith State Office Building
80 South Swan Street
Eleventh Floor, Suite 1147
Albany, New York 12210-8004
Friday, August 24, 2007
10:00 a.m.

STENOGRAPHIC RECORD of an Interview
conducted under oath pursuant to notice.

INTERVIEWEE: WILLIAM WAYNE BENNETT

APPEARANCES: MEAVE M. TOOHER, ESQ.
Investigative Counsel, New York State
Ethics Commission

PRESEN T: H. J. CAMPBELL, Commission Investigator
ROBERT SHEA, commission Investigator

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter
PROCEEDINGS

PRELIMINARY DISCUSSION

MS. TOOHER: I think you know what we are here to talk to you about, and it shouldn't take very long. I understand it your conversation with the Attorney General's Office wasn't too extensive?

MR. BENNETT: Not really.

MS. TOOHER: What we are looking to do is cover the same territory and take your statement under oath.

WILLIAM W. BENNETT, called as a witness before the Ethics Commission, and being duly sworn/affirmed by the notary public was examined and testified as follows:

THE WITNESS: I do so swear.

EXAMINATION BY MS. TOOHER:

Q. Could you state your full name for the record, please.

A. It's William Wayne, W-a-y-n-e, Bennett,

B-e-n-n-e-t-t.

Q. Where are you currently employed?

A. The City of Schenectady Public Safety Commission.
Q. And how long have you been there?
A. May 7th of this year.
Q. Where were you employed prior to that time?
A. New York State Police.
Q. What was your position there?
A. My last position was the Superintendent.
Q. What period did you serve in that capacity?
A. September 16th of 2003 I was confirmed by that Senate. My last work day was February 26, 2007, and my retirement date is May 6, 2007.
Q. How long were you with the State Police?
A. Since October 14, 1968, 38 and a half years.
Q. Most of the questions that I'm asking you today concern the time period that you served as Superintendent.
A. Okay, fine.
Q. And, from that perspective, I will be asking you a number of questions that are hypotheticals. And I understand I'm asking you to answer questions as to something that you may not have actually experienced, but that is of value to us here.
A. I understand.
Q. In your experience as Superintendent did you
ever deal with requests under the FOIL Law?

A. Personally?

Q. Yes.

A. No. If I could just clarify something, though. If there was a sensitive one, high profile person -- We used to get actors, actresses, politicians, and that would certainly be brought to my attention. But as far as the mechanics of addressing the requests for information, we have a Records Access Officer, Captain Laurie Wagner. She is the individual that handles all of that. She also has available to her an Assistant Counsel in our legal bureau to assist her with any issues, questions, decisions that she may have regarding a release or redacting, that type of thing.

Q. My understanding is that Captain Wagner is still the Records Access Officer at the State Police.

A. Yes.

Q. Was she the Records Access Officer during your entire tenure?

A. Yes.

Q. Do you know the assistant counsel she dealt
with while you were there?
A. Yes. It would have been Darren O'Connor.
Q. If she had questions concerning a FOIL, it 
was your understanding she would go to him if it 
was a legal issue?
A. Correct.
Q. You indicated if it was a sensitive matter 
you might be notified of that?
A. Yes.
Q. What would be the nature of that 
notification?
A. They would just tell me: Look, we have a 
request for Freedom of Information documents 
regarding a particular case. It could be one of 
two formats. It could be something that had 
notoriety for whatever reason, or it could be a 
case that down the line may lead to embarrassment 
of the agency or a requirement for us to address 
issues that, you know, would not be easy to 
address, that type of thing.
Q. And what sort of notification would you 
receive?
A. Verbal.
Q. Did you take any notes of that or keep any
records that you had received that notification?

A. No.

Q. It was just put on your radar screen?
A. Yes. It didn't happen very often, so you tend to remember them.

Q. Do you recall ever receiving requests from the executive chamber for FOIL documents personally?
A. Never.

Q. Did you ever receive requests from the executive chamber for documents concerning things other than police work?
A. No. I mean anything, you know, that required documentation between I and they would have already been in the form of some type of executive memorandum to the Governor's Office.

Q. You would prepare those memoranda?
A. Or my counsel. It might be my counsel would do it with her counsel.

Q. In your experience as Superintendent you don't recall ever receiving a request of a FOIL nature from the executive chamber?
A. No. That would have been completely unusual. The reason being, first of all, if they...
are going to ask for documents under what was
alleged to be a FOIL request that they have, I am
going to want to see that. First, you send me the
FOIL for our records, if nothing else. And, as
you know, FOIL gets served on the agency that has
the records, which wouldn't be the executive
branch. It would be the state agency.

Now, the State Police are part of the
executive branch but, still, I never, ever recall
anything coming through the Governor's Office as
far as them needing a FOIL. I don't ever remember
such a case.

Q. As far as them needing a FOIL, it is my
understanding that the State Police has
regulations concerning FOIL. Are you aware of
those?

A. Yes, I am.

Q. Are you familiar with them?

A. Yes.

Q. And, this is the New York State Police
Administrative Manual Rule 8, and it is dated
March 1998. This was provided to us by the State
Police and it is the provision covering FOIL. I
am just going to ask you, are there requirements
that a FOIL request be in writing --
A. Correct.
Q. -- to the State Police. Is that your understanding --
A. Yes, Ma'am. It is.
Q. -- of the records?
A. Yes.
Q. I am going to direct your attention to 8.6 which is 9NYCRR 43.6. I have a provision highlighted indicating: "No oral request will be accepted."
A. Right.
Q. To your knowledge, was that practice followed at the State Police?
A. Yes, to much aggravation of people in the news media.
Q. Why do you say that?
A. They are in the business of information, and timeliness is everything to them. They would call up and just say, "Can't you just tell me?" Or, "Why don't you tell me now and I will file a FOIL request." And we wouldn't adhere to that, which frustrated them immensely. That was our business practice. That was our practice, and we didn't
make any exceptions.

Q. Did you ever discuss that practice with
counsel at the State Police?
A. Never had to.

Q. It was understood that that was the practice
of the State Police?
A. Yes. The only person that would tell me
about those things would be the Public Information
Officer because he is the one that gets the call
from the news media. And he would mention: Oh,
yes. I got a verbal from so-and-so today and I
told them no and he's angry. And if he calls and
you get a complaint, that's what it's about.

Q. Who was your Public Information Officer?
A. At the time when I was Superintendent it was
Lieutenant Glenn Miner.

Q. Thank you. During your experience as
Superintendent did anyone under your command ever
have occasion to create documents after the fact
in response to a FOIL request?
A. Not to my knowledge.

Q. And are you aware of whether or not there
was any policy or practice at the State Police
concerning the creation of documents in response
to a FOIL request?
A. I don't believe there is any written policy, but I can tell you that everybody had a clear understanding that we are not in the business of creating documents that didn't otherwise exist. I mean there are business records kept in the normal course of business for the State Police and we all know that. I never heard of such a request.

Certainly, I would have never endorsed it had it come to my attention or my counsel's, because FOIL strictly covers documents that exist, not ones you might want to exist or might want to create. It's what they are at the time the request is received.

Q. Let's step outside of FOIL for a moment. Did you ever receive a request from the executive chamber to create a document?
A. Other than just normal business, you know, we might have conversations about some particular matter. They would say verbally initially: What are your viewpoints on this, that type of thing. And, they would say, well, just memorialize it in a memorandum to us.

Q. As to records of the State Police, did you ever receive any --
A. No.

Q. -- any sort of request from the executive chamber to create a document?

A. No, I did not.

Q. Are there documents of the State Police that are considered confidential?

A. Sure.

Q. What types of documents would those be?

A. There would be a variety of them: Confidential informant records, security, high security, high security profile assessments, that type of thing, on individuals in public life in particular. There could be a variety of things. Certainly, criminal investigations would be considered confidential.

Q. And, when you say "confidential" what does that mean within the State Police?

A. There is a regulation in the State Police that you don't have the authority to discuss any kind of investigation with anybody other than a U.S. Attorney, District Attorney, that type of thing. So, there are different levels of confidentiality, if you would. There may be the super-sensitive investigations that perhaps only a
few of us would know about, and there would be
others of a routine, confidential nature. But
they would be cases or records about incidents
that, you know, for one reason or another --
particularly the fact that it may be ongoing --
were kept confidential.

Q. You indicated that ongoing investigations
might be one reason something might be
confidential.

A. Right.

Q. What are the other types of reasons that
documents would be considered confidential?

A. Not for purposes of FOIL?

Q. Well, for the purposes of FOIL and for the
purposes of turning over documents, say, to
another agency.

A. Again, we might, you know, have a request
from the prosecutor saying he doesn't want these
things released to anyone, that type of situation.

We used to get cases where, say, a U.S. Attorney
may be prosecuting as well as the local D.A. And,
of course, it becomes a little bit of a turf
battle. And they tell you very quickly whether or
not they want to share any of those records with
anybody else, that type of thing.

Certainly, within the parameters of FOIL -- I will give you an example. With domestic relations complaints, okay, our policy in the State Police was that if there was no arrest made we would not disclose the documents, okay. We were sued twice, once in western New York and once in eastern New York by people who were involved in cases like that and wanted these documents for divorce proceedings. And the judges in both cases upheld our policy that: No arrest, no disclosure. So, that would be certainly something that is kept confidential as well.

Q. What about security interests?

A. Absolutely.

Q. What do you consider security interests within the parameters of the State police?

A. It could be a variety of different things. It could be the security of our own building, security of prisoners, the security of confidential informants' files, money, narcotics. There is a host of things that we may consider to be confidential.

Q. What about the security interests of public
officials?
A. I'm not sure I understand. What would be an example of what you are referring to?
Q. Well, I can give you a very narrow example.
A. Please do.
Q. Travel itineraries of public officials, would you consider those documents to have security interests attached to them?
A. Yes, unless, you know, they were publicized. I mean the Governor's Office routinely publicizes the Governor's daily schedule. Certainly, that's different. But, generally, there is an absence of public disclosure by the officials themselves and, so, we would not disclose that for security reasons.
Q. What would be the security reasons?
A. Well, the fact that if you were to disclose that before the fact, certainly, you know, people would know exactly where that official is going to be and the approximate time frame. And, obviously, it increases the risk for safety when people know that. We just simply wouldn't do it.
Q. Have you ever had a request for travel itineraries concerning public officials?
A. Never.

Q. Have you ever had a request from the executive chamber for travel itineraries of public officials?
A. No, I have not.


Q. Have you ever seen these documents before today?
A. No. This is the first time.

Q. In your experience with the State Police have you seen documents similar to this?
A. Never.

Q. Take a moment.
A. Nor would I need to see them.
Q. And, why is that?
A. Because they are -- you know, what is portrayed here is really in-house, you know, information, there is no reason for me to know about that. Would I know where Senator Bruno is, perhaps, on a particular day, sure. Beyond that, this has no value to the agency or to myself.
Q. To your knowledge, were those types of records kept at the State Police?
A. Not to my knowledge.
Q. If these types of records were kept at the State Police, do you know where they might have been kept?
A. Well, we certainly would have no need for them at the headquarters level in Albany, no need at all. So, if they were to be kept even informally without my knowledge or to our knowledge at headquarters, I would presume that it would be a local issue, if you will, and be kept by the office in New York City in this particular case.
Q. That would be the office providing the transportation?
A. Yes.

Q. This type of information contained in these documents, would that be considered security information?

A. Yes.

Q. Is this the type of document that you would release to the public?

A. No, Ma'am.

Q. And why is that?

A. Because it does jeopardize the security, you know. For instance, if I lay all four of those out here and start coming up with a pattern in his travel, certain locations repeatedly, or all travel is done, for example, at certain hours of the day, like every one of them indicating they are arriving at the Downtown Heliport, those are the types of things that, if I were looking to cause harm to somebody, those are the things I would like to know because of concerns as to the arrival plans, things like that.

Q. I am obviously asking you to hypothesize here. If you receive a request to disclose these documents to the media, do you know what your response would be?
A. "No."

Q. If you received a request to disclose these documents to the media in your capacity as Superintendent would you do so?

A. No. First of all, let's go back to what we just said. First of all, it would have to be a written request. And, second of all, I would recheck with my counsel, I'm sure. And I know he would agree with me that we are not going to disclose this.

MR. SHEA: That would be a written request to the State Police?

THE WITNESS: Absolutely, because I am not going to accept anybody else's FOIL. If you want a FOIL of State Police records, it has to come to us in the way it's supposed to be done. We are the keepers of the records.

Q. I am going to show you what has been marked as Commission Exhibit 5, captioned, "Trip to New York City, Thursday, May 17th, and Friday, May 18, 2007. And I will ask you if you have seen those documents before today.

A. No, Ma'am.

Q. In your capacity as Superintendent with the
State Police, did you ever see documents of this sort?

A. No. The only thing that would even closely resemble this that I do know exists, although I wouldn't have any reason to see them, is the flight manifest kept by aviation which is a requirement by FAA.

Q. Again, look at this document. Would this be a document that would have security interests attached to it?

A. Absolutely. It's the same situation here. I have got a pattern of where he is arriving, where he is landing. For this particular case, I know that he had people with him. You know, if you had enough of these logs, this would be information that I would like to know if I was seeking to, you know, do something here, whether it be causing harm to the individual or harassing them, or whatever.

Q. So, in your experience, you would not turn documents of that sort over to the public?

A. Absolutely not.

Q. Can you conceive of a circumstance in which you would be willing to release this type of
information concerning public officials?

A. Again, the only way I think we would even

look at that possibility is, let's say Senator

Bruno or whoever, called and said, you know: I

have a problem. Would you release these

documents? Our answer to him would be: We are

not going to release them. This is your

itinerary. This is your information. You release

it.

Again, there is another issue here in

that there is more than one individual listed

here. So, if Joe Bruno wants to put out his

itinerary, go ahead, Senator. Do it. But we are

not going to release any information about other

people for the very same reasons.

Q. Are you familiar with William Howard?

A. Yes, very familiar.

Q. How do you know Mr. Howard?

A. I was the First Deputy Superintendent, which

is the number two person in the State Police, from

April of 1994 to the day I made Superintendent.

During that time period, more so in the latter

half, you know, I would on occasion deal with him

if the Superintendent, which was Jim McMahon,
happened to be out at the time, out of the office.
And, of course, as Superintendent he was my
contact person generally for all business in the
Governor's Office.

Q. What was Mr. Howard's position during that
time, if you know?
A. Well, let's see. They referred to him as a
couple of different things. I called him Deputy
Chief of Staff.

Q. And, in your relationship with Mr. Howard --
and you are now talking about the Pataki
administration --
A. Yes.

Q. -- did Mr. Howard ever request documents
from you?
A. Of this nature?
Q. Of that type.
A. No, never.

Q. Did he ever seek FOIL documents from you?
A. No, he didn't.
Q. Did you ever have a conversation with Mr.
Howard concerning the transportation of Senator
Bruno?
A. Oh, we had a couple, yes.
Q. Do you recall the sum and substance of those conversations?

A. What was happening is, you know, Senator Bruno's office wanted to use the helicopter. The procedure in place is that they had to make the request of the Governor's Office and the Governor's Office would approve it or disapprove it. And, generally, as the Superintendent I didn't get involved in that at all. Senator Bruno's Office would talk to the Governor's security detail. They were the liaison, if you will, to get it approved by the second floor. And, generally, I wouldn't even know about it. But, there was a period of time where Mr. Howard felt that perhaps Mr. Bruno was using it a little too often and, you know, was that really first of all necessary and was it proper. And, you know, my response to him would be: That is your decision to make. And it always has been. These ships were not med-evac equipped, so that was an issue. It's always an issue at aviation. We maintain a policy that you had to make sure those ships were available for that purpose. It would be a tremendous embarrassment if some politician had
that ship and someone needed it for medical reasons. But, the ships that they were flying on were not med-evac ships. But, generally, he brought that up about -- Let's face it. Politically, there are times when the Senator and the Republican Senate were at odds with Governor Pataki. That's a war waged at a much higher level than mine, and I am glad it was. But I'm sure that may have had something to do with it as well.

Q. Do you recall the time frame, roughly, when you had these conversations?

A. It had to be when I was the Superintendent. I would say that would have been perhaps early in 2006.

Q. And I understand that's an approximation on your part.

A. It is.

Q. What was the outcome of those conversations?

A. Well, you know, for example, I remember one particular instance that they were going to deny the use of the ship and then that subsequently changed. So, you know, again, the ball went right back into their court. These are decisions they would make and we would follow, if you will. So,
nothing would have changed as far as policy, but he did express his concern that he thought perhaps it was too frequent. And the issue was about that.

Q. Did he ever direct you not to provide transportation to Mr. Bruno?

A. I don't ever recall that, no. And, certainly, if he had I would have done it. I mean he was my boss. And I would have had to tell the aviation people as well. But I don't recall that happening ever.

Q. Let me ask you this. In Mr. Howard's capacity as your boss, if he had asked you to provide these types of documents would you have done so?

A. No.

Q. Why is that?

A. Because, as I told you, first of all, without a FOIL in hand I am not going to examine things. Don't even go there. They all knew it. I had a reputation of being kind of independent. My mentor was Tom Constantine and he was extremely strict. And he used to tell me that the ultimate bottom line in a decision is to protect the
agency. So, had he ever requested anything like that, the answer would have been: Sorry, Bill. If you want to fire me, have at it. But it's not going to be.

Q. Have you had any contact from anyone else concerning these issues and the Attorney General's inquiry?
A. No.

Q. Have you spoken with Superintendent Felton?
A. I have seen him. I have to go through there periodically just to get the mail. And I would say hello to him, but nothing beyond that.

Q. You have not discussed these issues?
A. No.

Q. Have you spoken with anyone from the executive chamber?
A. No.

Q. Have you spoken with Dan Wiese at all concerning these issues?
A. No.

Q. You have not spoken with anyone outside, obviously, of this office concerning these issues and the investigation in the Attorney General's Office?
A. The only one I talked to is Jim McMahon who was my predecessor in the Superintendent's office. I had, you know, called him and said, "The Attorney General is trying to get in touch with you, and I provided them with your office information," that type of thing. And, then, he called me about a totally unrelated personal issue later on and made mention of the fact that, you know, that he, too, had been asked the same question. And he, too, never recalled any such type activities. But beyond that, no.

MS. TOOHER: Thank you. That concludes the interview. And I really appreciate your coming in. It's a big help to us.

(The interview was concluded at approximately 10:40 a.m.)

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STATE OF NEW YORK )
 ) SS:
COUNTY OF ALBANY )

I, BETH S. GOLDMAN, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the County of Albany and the State of New York, hereby certify that the proceedings recorded hereinabove were recorded stenographically by me and reduced to computer-generated transcription.

I FURTHER CERTIFY that the foregoing transcript of said proceedings is a true and correct transcript stenographically recorded at the time and place specified hereinbefore.

I FURTHER CERTIFY that I am not a relative or employee, attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2007.

BETH S. GOLDMAN
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public