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STATE OF NEW YORK  
COMMISSION ON PUBLIC INTEGRITY

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In the matter of

An Investigation into the Alleged  
Misuse of Resources of the Division  
of State Police

=====

Commission on Public Integrity  
Alfred E. Smith Building  
80 South Swan Street, Suite 1147  
Albany, New York 12210-8004

Wednesday, September 26, 2007  
10:20 a.m.

STENOGRAPHIC RECORD of an Investigative  
Interview conducted under oath.

INTERVIEWEE: GLEN ROBERT MINER  
Director, Public Information NYSP

APPEARANCES: For the Commission:  
  
HERBERT TEITELBAUM, ESQ.  
Executive Director

APPEARANCES: MEAVE M. TOOHER, ESQ.  
Investigative Counsel  
  
JOAN P. SULLIVAN, ESQ.  
Investigative Counsel

PRESENT: ROBERT SHEA, Investigator

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

1                   G L E N R O B E R T M I N E R,  
2 called as a witness before the Commission, and  
3 being duly sworn/affirmed by the Notary Public,  
4 was examined and testified as follows:

5                   MR. TEITELBAUM: Sir, before we begin  
6 and, on the record, we met before. I am Herbert  
7 Teitelbaum. You understand that you have the  
8 option, if you wish, to have counsel with you.  
9 You understand that?

10                  THE WITNESS: Yes, sir.

11                  MR. TEITELBAUM: Okay.

12 EXAMINATION BY MS. TOOHER:

13         Q. Would you state your full name for the  
14 record, please.

15         A. Glen Robert Miner.

16         Q. Your position?

17         A. Technical Lieutenant, Director of Public  
18 Information for the New York State Police.

19         Q. And you are here voluntarily today; is that  
20 correct?

21         A. Yes.

22         Q. And what are your job duties with the State  
23 Police?

24         A. I am primarily liaison with the media and

1 with the Governor's Office with regard to media  
2 type events and issues.

3 Q. When you say "media type events and issues"  
4 can you expand upon that a little bit?

5 A. Anything that might relate to the media in  
6 terms of media questions, in terms of how our  
7 agency presents itself publicly in terms of -- to  
8 separate, we have local media type events where we  
9 would have investigations at the troop level.  
10 Normally, I wouldn't be involved in those types of  
11 situations. But if there are issues that would be  
12 more of a statewide type -- I'm trying to give you  
13 an example; new programs, things like that that we  
14 would be presenting or part of, I would be dealing  
15 with the Governor's Office with regard to that.

16 Q. So, issues that apply to the agency as a  
17 whole would also go to you?

18 A. Correct, yes.

19 Q. And, how long have you been in that  
20 position?

21 A. I have been in the office since early 2001.  
22 I have been acting as Director since mid 2002.

23 Q. When you say "in the office" --

24 A. I was working as an assistant in the office

1 from early 2001 as a Sergeant.

2 Q. And, what office is that?

3 A. I'm sorry; the Public Information Office.

4 Thank you.

5 Q. And you have been the Director since mid  
6 2002; is that correct?

7 A. Correct, um-hmm.

8 Q. And, as Director do you supervise others in  
9 the office?

10 A. Yes. I have a Sergeant currently in my  
11 office who acts as the Assistant Public  
12 Information Officer. And there's a young man who  
13 answers phones in our office as well.

14 Q. And, as Director are you aware pretty much  
15 of all inquiries that come into your office?

16 A. That come into our office, generally. There  
17 may be issues we are dealing with -- different  
18 companies are looking to do stories. For  
19 instance, on our forensic investigation center  
20 along the CSI lines, oftentimes the Sergeant in my  
21 office will be handling those. I may not be aware  
22 of every single issue. But with regard to most of  
23 the issues that are coming through the office I  
24 would be aware of most of those, yes.

1 Q. And, you indicated that you are the liaison  
2 with the Governor's Office. What does that  
3 entail?

4 A. With regard to media type things I would be  
5 -- It would be incumbent upon me to inform the  
6 Governor's Press Office of any issues that might  
7 come up; for instance, things that might happen  
8 down in the Plaza. I think a situation I used as  
9 an example in former testimony was an  
10 investigation we are doing into an employee of the  
11 State Education Department who apparently was  
12 accused of -- could possibly be accused of  
13 inappropriate behavior with a young lady. At the  
14 time, we didn't have a victim, although somebody  
15 had observed some behavior in the State Museum.  
16 Subsequently, we made an arrest of this man.  
17 During my prior testimony with the Inspector  
18 General I was using that as an example. But that  
19 is the type of thing I would let the Governor's  
20 Press Office know, hey, we are looking into this  
21 in case you get inquiries into this, the media  
22 apparently has some information. People have made  
23 calls about this individual and we are looking  
24 into it. This is what we have so far, so they

1 aren't caught off guard about inquiries like that  
2 if they come up.

3 Q. So, if it's a hot button issue, something  
4 that's getting a fair amount of media play, you  
5 will reach out to the Governor's Office?

6 A. Or something that might potentially get some  
7 media play, especially something down in the Plaza  
8 area, issues -- Sometimes we have found white  
9 powder in a mail room from somewhere. We have  
10 gotten many of those since 2001. Those are the  
11 types of things that if I became aware of that, I  
12 try to give them a heads-up on it so they are not  
13 caught off guard by a reporter asking a governor:  
14 Hey, what about this? So, hopefully, they have  
15 some information on it on what we are doing.

16 Q. Currently, who is your contact in the  
17 Governor's Office?

18 A. Currently, it's Paul Larabee.

19 Q. And how long has that been the case?

20 A. Since the beginning of the administration,  
21 since the beginning of the year. At that time I  
22 was -- well, earlier in the year I was also  
23 dealing with Bill Howard. He is no longer in the  
24 position that I was dealing with him.

1 Q. When did you stop dealing with him; do you  
2 recall?

3 A. At the end of July, right after the Attorney  
4 General's report came out and the Superintendent  
5 -- I'm sorry, the Governor had reassigned Bill  
6 Howard, I believe, at that point.

7 Q. And did you know Bill Howard prior to the  
8 Spitzer administration?

9 A. Yes, I did.

10 Q. And, how did you know him?

11 A. Occasionally I had dealings with him through  
12 the Pataki administration. He oftentimes -- or  
13 occasionally would have inquiries about different  
14 functions, different -- he might be looking for  
15 information, for instance, regarding an upcoming  
16 academy graduation. Just facts and figures type  
17 things. My understanding is that he sometimes had  
18 some input in terms of maybe some of the speeches  
19 and things that the Governor might have been  
20 involved in at that time. He wasn't -- my  
21 recollection is that he was not really involved as  
22 much with that type of stuff in the Pataki  
23 administration. He became more involved in the  
24 new -- in the Spitzer administration with those

1 types of functions.

2 Q. So, you had more contact with him with the  
3 Spitzer administration than you had with the  
4 Pataki administration?

5 A. Absolutely, correct.

6 Q. I think your testimony before the Inspector  
7 General indicated that you were his "go-to guy,"  
8 in effect, for press issues?

9 A. In the current administration?

10 Q. Correct.

11 A. Correct, yes.

12 Q. Did that continue through the end of July?

13 A. Yes -- yes. I think more of it -- I knew we  
14 were dealing with an academy graduation, I believe  
15 the second week of July. And he was asking me  
16 information about specific attendees. For  
17 instance, I believe there were some issues having  
18 to do with -- I don't recall exactly, but having  
19 to do with -- we just dealt with a line-of-duty  
20 deaths and shootings. And it was along those  
21 lines; graduates, particular ones who were  
22 receiving awards, along those lines. Again, I  
23 don't remember exactly what the conversations were  
24 but it was more information for the Governor

1 because he was going to be at the graduation.

2 Q. Okay. Now, back to the parameters of your  
3 position. What are the parameters as far as  
4 comment? I have seen you quoted in the newspaper.  
5 Do you have guidelines as to what you can and  
6 cannot say to the public?

7 A. You are talking (about) to the media?

8 Q. Yes.

9 A. Guidelines -- Generally, if it's something  
10 that I have an immediate answer to, something very  
11 clear, I would give them information. If it's  
12 something that's -- give that information. If  
13 it's something that we have given on prior -- if  
14 it's something that's standard type information I  
15 would just give that out. If it is, for instance,  
16 you know: How many helicopters do we have, we  
17 give that information out, just that type of  
18 stuff. If there's something new or evolving I may  
19 not have enough information to give an answer at  
20 that point in time. Most of the time I would tell  
21 them "I will have to get back to you on this." I  
22 would then check with usually the Superintendent  
23 about it, depending on what the issue is, if he is  
24 familiar with what's going on. Maybe it's an

1 Internal Affairs question. For instance, we had  
2 some troopers that were alleged to have been  
3 involved in some misconduct at the New York State  
4 Fair several years ago and there was an ongoing  
5 investigation. Prior to this New York State Fair,  
6 I had some inquiries from the Syracuse Post  
7 Standard. With regard to that I would talk to our  
8 Internal Affairs section and find out, all right,  
9 where did this go? What do we have? I would  
10 possibly speak with Counsel's Office if it was  
11 something that may involve litigation where I  
12 didn't want to give information that might hurt an  
13 investigation.

14 Q. Is there information that you are not  
15 permitted to give that is not public information?

16 A. "Not permitted to give" -- as a -- I'm not  
17 sure I understand the question.

18 Q. Would there ever be information -- You  
19 mentioned an investigation at the Plaza before  
20 where you might not be divulging information  
21 concerning an ongoing investigation.

22 A. Right. That's common police practice. I  
23 mean you wouldn't want to hurt an investigation by  
24 giving too much information out. On the other

1 hand, too, because -- in that instance we didn't  
2 have enough information necessarily to show that  
3 this individual may have committed a crime. And  
4 we wouldn't want to give out that individual's  
5 name, in fact, he didn't commit a crime. That  
6 would be premature. I might explain that normally  
7 to a reporter. Hey, you may want to be careful on  
8 this. We don't have enough information, so you  
9 may be unduly hurting an individual before we have  
10 all of the facts here.

11 Q. So, you would give the information to the  
12 reporter with a caution or --

13 A. I wouldn't give the information, but I would  
14 caution them if they were receiving it from  
15 another source, which I believe at that point in  
16 time, someone had given the individual's name up,  
17 I would caution them. Hey, we don't have enough  
18 information here. You might want to be careful on  
19 this for your own sake not to pursue this at this  
20 point until we do have more information. But in  
21 terms of an absolute: No, you cannot say this, I  
22 can't think of an example where I wouldn't be  
23 allowed to. I mean it would be a sense of my  
24 position and, hopefully, common sense and a sense

1 of, like I said, from past experience of what I  
2 should or shouldn't say. But I can't think of  
3 anything that would be absolutely prohibited from  
4 saying.

5 Q. And you indicated earlier that you would  
6 check with the superintendent on certain issues or  
7 check with counsel on issues?

8 A. Correct.

9 Q. In terms of potentially confidential or  
10 non-public information, is that the kind of thing  
11 that you would check with the Superintendent or  
12 counsel?

13 A. Yes. That would be an example --  
14 information non-public -- I'm not sure exactly  
15 what you mean by "nonpublic."

16 Q. I'm not sure that I am. I am trying to kind  
17 of tease out from you what would be examples of  
18 the kinds of things that you wouldn't give out.

19 A. That I couldn't give out. Well, we are  
20 basing this on inquiries essentially from the  
21 media. If the media is calling me and asking me  
22 for a specific type of information if I didn't  
23 have -- well if, for instance, there were  
24 voluminous documents. I'm not going to just read

1 the documents. I'm not just going to hand over  
2 the documents. Sometimes, there would be -- I am  
3 trying to think of a specific example.

4 Q. Well, documents are a good example. How  
5 often do you receive requests for documents?

6 A. Most of the requests for documents go  
7 through our records section. Even -- and the  
8 media generally knows that if they want to make a  
9 request under the FOIL law for documents, they  
10 file that type of written request directed to the  
11 Records Section, our Records Section.

12 Q. We are talking about a FOIL request here?

13 A. A FOIL request.

14 Q. Do you get FOIL requests?

15 A. Sometimes they come through our office and  
16 they are redirected to the Records Section.

17 Q. So, you do not handle FOIL requests?

18 A. I don't handle FOIL requests.

19 Q. Do you handle document requests?

20 A. It depends on what they are. If a document  
21 -- well, I'm going to bounce around here a little  
22 bit hopefully to make this more clear.  
23 Occasionally there would be a FOIL request coming  
24 to our records section where it might be just

1 something very simple, a request for documents  
2 about how much troopers' salaries are. For  
3 instance, I believe we got one recently on that.  
4 The records section may then contact me and say,  
5 hey, this reporter is looking for this relatively  
6 simple information you can give out orally. Maybe  
7 they don't know this. Do you want to reach out  
8 and give this to them? I don't see a problem with  
9 that to make it easier for the reporter. For  
10 instance, in that case I reached out and said, hey  
11 -- actually, it was a Post Standard reporter.  
12 This is relatively simple. I can give you this  
13 over the phone orally, depending on -- sometimes  
14 they don't have their FOIL requests or the request  
15 for documents very clear. Sometimes, they are  
16 asking questions which FOIL isn't really  
17 responsive to to answer questions. It's for  
18 documents specifically. And I will attempt to  
19 help them out with those types of requests as  
20 well. I got off topic here a little bit.

21 Q. Does the FOIL officer come to you with those  
22 kinds of requests?

23 A. She will call me. If it looks like  
24 something that is from a media representative and

1 it looks like it might be something that I might  
2 be able to answer and handle rather than push it  
3 through their system which could put off -- which  
4 could delay the process. I mean my understanding  
5 is that we get hundreds of FOIL requests through  
6 that office. And if it is something that they are  
7 looking for relatively soon, we try and be  
8 responsive and handle it outside of FOIL if it's  
9 something that could be handled out of FOIL.

10 Q. Do you get notified as to all of the media  
11 FOIL requests?

12 A. Generally, yes. They try to notify me.  
13 Have I ever been not notified? It's possible.  
14 But most of the time they try to let me know, hey,  
15 they are looking for this, just to kind of give me  
16 a heads-up on what a potential story might be  
17 about and perhaps I might be able to guide them,  
18 the reporter in an easier direction. I'm trying  
19 to think of a recent example where -- actually, we  
20 received -- I spoke with a reporter from Newsday  
21 recently who wanted along these lines -- I'm sure  
22 it's a spinoff of this story -- the whole flight  
23 use. His editors felt they might want to do a  
24 story on overall State Police aircraft use to kind

1 of do a pie chart and talk about how much of this  
2 is used for executive transport. And I gave him  
3 some input. I told him we have I believe 19  
4 aircraft and only three of those, I believe, are  
5 used for executive transport. So, the story he is  
6 looking to do may be a lot more difficult in terms  
7 of looking at overall use. We have many, many  
8 missions, including DEC missions and many  
9 non-executive transport-related missions despite  
10 what has been in the papers recently. And that  
11 helped him in terms of being able to talk to his  
12 editor rather than denial of a FOIL request for  
13 all of the documents relating to all flights we  
14 have made. That would in my mind, in my  
15 estimation, that might not be very helpful to him  
16 at all.

17 Q. So, the FOIL officer will give you a  
18 heads-up on media requests and will also direct  
19 requests to you that she thinks are better suited  
20 to you?

21 A. We have a discussion. She'll say -- she'll  
22 tell me: So-and-so has filed a particular request  
23 for documents. You know, she might suggest it's  
24 something that I might be able to handle, or I

1 might say: This is something we have given out  
2 before. I have got this right here. It's  
3 relatively simple. I will tell her I will handle  
4 this, and she'll say: Okay, I won't worry about  
5 it unless I hear something different from you that  
6 we are going to continue with it as a Foil  
7 request.

8 Q. And the FOIL officer with the State police,  
9 who is that?

10 A. That's a Captain Lori Wagner who is the  
11 Records Access Officer.

12 Q. Now, do you ever get those types of heads-up  
13 from the Governor's Office?

14 A. I can't think of a specific example. But if  
15 they are aware that we might be getting a specific  
16 request, if they have redirected a reporter to us  
17 for a particular record it would be possible. I  
18 think I would have it more under the last -- I  
19 can't think of a specific example where that  
20 happened, but it wouldn't be out of the question.

21 Q. But you can't recall any instance under the  
22 current administration where they have given you a  
23 media heads-up or reached out to you?

24 A. Oh, a media heads-up, sure, that: You are

1 going to get a call from a reporter. Sure. Oh,  
2 that happens all the time. With regard to a FOIL  
3 request, not necessarily.

4 Q. And, who would reach out to you from the  
5 Governor's Office?

6 A. Normally, it would have been Paul Larabee.  
7 I'm trying to think of others in the press office  
8 who have reached out to me under this  
9 administration, but --

10 Q. Has Bill Howard ever reached out to you?

11 A. Yes -- yes. Obviously, not recently.

12 Q. And, more particularly, are you familiar  
13 with requests for aviation records from the State  
14 Police?

15 A. Meaning what?

16 Q. Have you received requests for aviation  
17 records?

18 A. Yes.

19 Q. And, historically, what type of requests  
20 have you received?

21 A. This tends to be an annual, if not  
22 perennial, request from the media to see what can  
23 be found out about who is using state aircraft.  
24 When I started in the office in 2001, I recall a

1 request -- I don't remember from which agency. It  
2 was the summer of 2001. I believe it was July  
3 2001. My then supervisor, Lieutenant Jaime Mills,  
4 I remember her speaking of getting a request -- it  
5 was probably from Fred Dicker. I think the title  
6 of the story was "Air Pataki." And it was over  
7 the use of aircraft. And, again, that's from my  
8 time in the office. Prior to that, Governor  
9 Pataki had made it a campaign issue when he ran  
10 against Cuomo about the use of the aircraft. So,  
11 this is nothing new. With regards to requests for  
12 the flight manifests, as we call them, it would  
13 show who the passengers were. Fairly regularly we  
14 receive these types of requests.

15 Q. Now, do you respond to those types of  
16 requests?

17 A. It would be forwarded -- I would explain to  
18 a reporter who is asking for these that they would  
19 have to make a FOIL request to our Records Section  
20 and go through that process.

21 Q. Now, if you recall, in the past have those  
22 requests been for particular individuals or  
23 particular time frames?

24 A. I don't recall for particular individuals in

1 terms of my recollection. It was usually for time  
2 frames. It would be for, you know, from  
3 such-and-such a month of this year to  
4 such-and-such a month or for the entirety of a  
5 particular calendar year. But I don't recall at  
6 any time ever being requested for records of an  
7 individual.

8 Q. And, in providing -- have you ever provided  
9 the flight manifests, the documents themselves?

10 A. I don't recall. I don't believe so, no. I  
11 mean my recollection is that they always went  
12 through the Records Section.

13 Q. So, if you got a request for the manifests  
14 you would redirect it?

15 A. Correct.

16 Q. Do you recall ever getting a request for any  
17 ground itineraries in that context?

18 A. No.

19 Q. You got a request in March --

20 A. Um-hmm.

21 Q. -- of 2007. Do you remember that request?

22 A. Yes, I do.

23 Q. Can you tell us about that.

24 A. I don't remember the exact date. It was

1   sometime in mid to late March, I believe. Mr.  
2   Dicker from the Post Standard called our office --  
3   I didn't receive the call directly to my  
4   recollection -- asking for flight records. I'm  
5   not sure exactly how he worded that. It was  
6   either the gentlemen who answers our phones or it  
7   was the Sergeant in my office explained to Mr.  
8   Dicker that you would have a FOIL law request, the  
9   normal process for those types of records. He  
10  complained that this administration was more open  
11  and transparent and that our office should be more  
12  responsive and just turn over the records. Now,  
13  he did not -- this was not a FOIL request per se  
14  by definition. He was requesting records orally,  
15  so there was nothing in writing at that point in  
16  time. He didn't like that response. I explained  
17  -- I spoke to the Superintendent after that call  
18  and explained to him that we weren't going to  
19  respond; that I didn't feel that we should respond  
20  to his request orally, as we haven't done this  
21  before and that, you know, this would make it  
22  very difficult for us, for the Records Section for  
23  us to start responding to these types of requests  
24  if we established that type of precedent and that,

1 frankly, he shouldn't be given any special  
2 privileges. Everybody else has to go through this  
3 process, unless it's something relatively simple  
4 to supply. But in this case, that was not my  
5 recollection in terms of doing this over and over  
6 again or the potential for doing it.

7 Q. What was your understanding as to the  
8 documents he was requesting?

9 A. As to what they were?

10 Q. Um-hmm.

11 A. I believe he was looking for flight manifest  
12 records, executive flight manifest records for the  
13 beginning of the year up until that point in time  
14 for 2007.

15 Q. And you felt that if he was looking for the  
16 executive flight records that he would be required  
17 to seek a FOIL?

18 A. That is -- yes, because that's how I have  
19 handled those in the past and those can be quite  
20 voluminous.

21 Q. Was it your understanding that he was  
22 looking for ground itineraries at that time?

23 A. No.

24 Q. And, if he had been looking for ground

1 itineraries at that time what would have been your  
2 response?

3 A. I still would have referred him to our  
4 Records Section.

5 Q. For release of ground itineraries?

6 A. Yes, if we had ground itineraries. I mean  
7 whatever records he might be asking for, I would  
8 have referred him to our Records Section.

9 Q. Was it your understanding that the State  
10 Police had ground itineraries?

11 A. At that point in time I really had no  
12 knowledge one way or the other. I had not worked  
13 in a position in recent years where we had that  
14 type of document where we would have created such  
15 a document. I did work security years ago for  
16 Governor Cuomo here in Albany. I recall us having  
17 schedules for the Governor. They were internal  
18 schedules so that we knew where we would be going.  
19 But, in terms of whether those would be our  
20 documents or the Governor's Office's documents I  
21 wouldn't know. And, again, that would be  
22 something that would be decided by records.

23 Q. Would you release that kind of information  
24 if you had it?

1 A. It wouldn't be up to me.

2 Q. Who would you consult?

3 A. I wouldn't consult. I would refer that to  
4 our Records Section. Our Records Access Officer  
5 would then be looking at that. And, if we had  
6 those documents, whether or not they should be  
7 released would be discussed with Counsel's Office.  
8 But that wouldn't be something that I would be  
9 involved in.

10 Q. So, that's the type of request you would  
11 refer to the FOIL officer?

12 A. Correct.

13 Q. And, when you told Mr. Dicker that he needed  
14 to put his request in writing what happened?

15 A. He didn't like it, as I stated. He felt  
16 that we should be more responsive and that he was  
17 going to -- I don't know if he said he was going  
18 to call the Governor's office or not. But I  
19 assumed he would, because that has been his past  
20 practice. When he doesn't get his way he tries to  
21 go over people's heads. So, after I advised the  
22 Superintendent that I didn't think we should just  
23 release those documents that way without a written  
24 request, I also e-mailed Paul Larabee explaining

1 that I didn't want to establish a precedent of  
2 just releasing these orally.

3 Q. If I can stop you for just a moment. You  
4 indicated that you advised the Superintendent.

5 A. Yes.

6 Q. What did you do?

7 A. What did I do?

8 Q. Did you go in and speak to him?

9 A. I believe I spoke to him personally in his  
10 office.

11 Q. And, what did you relate to him?

12 A. I related to him that Fred Dicker had  
13 requested flight manifest records and that our  
14 office advised him that he would have to follow  
15 the FOIL process to do this. And he agreed that,  
16 you know, if he wanted those records from us that  
17 is what he would have to do. Now, in the meantime  
18 -- and I don't remember if I spoke to the  
19 Superintendent after or prior to relating this to  
20 Paul Larabee at the Governor's Office -- I  
21 explained that I didn't think that our agency  
22 should establish a precedent of responding to  
23 these requests orally. Subsequent to my  
24 conversation -- I realize I may sound confusing

1 here. I spoke to Paul Larabee. I spoke to the  
2 Superintendent. I don't know in which order  
3 there. Subsequent to those conversations  
4 regarding what we had told Fred, I spoke with Paul  
5 Larabee who advised me that, apparently, Fred had  
6 contacted him and was asking for those records. I  
7 said -- I explained to him: Look, if you want  
8 these records, if you want to provide these  
9 records, we are not establishing a precedent from  
10 our agency of providing them orally. That's is up  
11 to you. We are a department -- we are a division  
12 of the Executive Department. He then requested  
13 those records.

14 Q. Larabee requested those records?

15 A. Yes. He requested those records from us.

16 Q. Did he request them directly from you?

17 A. Yes, I believe so.

18 Q. And how did you obtain those records?

19 A. My Sergeant called our Aviation Unit who  
20 compiled those records.

21 Q. And your Sergeant is --

22 A. Kern Swoboda.

23 Q. So, just so we are clear here, you got the  
24 request from Fred Dicker?

1 A. Um-hmm.

2 Q. And, you tell him he needed to get a FOIL?

3 A. If he wants them from us he needs to use the  
4 FOIL process in writing.

5 Q. Did you tell him to go to the Governor's  
6 Office?

7 A. No.

8 Q. Then, you reached out to Larabee --

9 A. Yes.

10 Q. -- and advised him that you had told Dicker  
11 that he needed to get a FOIL request?

12 A. Correct.

13 Q. You also reached out to the Superintendent  
14 and advised him that you had told Dicker he needed  
15 a FOIL request?

16 A. Correct. Well, if he wanted them from our  
17 agency. I realize it may not sound like a  
18 distinction, but if you wanted them from our  
19 agency.

20 Q. I understand the distinction.

21 A. Okay. I want to be clear on that.

22 Q. When you spoke with the Superintendent he  
23 agreed with you that requesting a FOIL request was  
24 appropriate in those circumstances?

1 A. From us, yes. Right.

2 Q. And, then, you reached out to Larabee by  
3 e-mail --

4 A. Yes.

5 Q. -- and advised him --

6 A. I advised him of my concern.

7 Q. Go ahead.

8 A. -- of my concern that we should not respond  
9 to Dicker's verbal request for this. Do you have  
10 a copy there? I'm okay.

11 (Commission Exhibit 6 was marked for  
12 identification.)

13 Q. I'm going to show you what has been marked  
14 as Commission 6. Can you identify this document?

15 A. Yes. It's not exactly the format that I  
16 recall but, yes. It appears to be an e-mail from  
17 me to Paul Larabee.

18 Q. Now, this e-mail says it was sent at  
19 approximately 2:24 p.m. Do you recall when you  
20 first received the inquiry from Dicker?

21 A. I don't -- I don't.

22 Q. And, in this, you were advising Larabee that  
23 you had received the inquiry and redirected it.

24 A. That I redirected it?

1 Q. Rejected it, I'm sorry. Is that correct?

2 A. Let me just look at it. (Pause) Correct,  
3 yes.

4 Q. And, was there a response from Mr. Larabee  
5 to this e-mail?

6 A. I believe we spoke on the phone. There was  
7 not a follow-up e-mail. Otherwise, he would have  
8 had something to the effect that he said that he  
9 would handle it if we gave -- if we turned over  
10 the records to him.

11 Q. So, he advised you that he would handle this  
12 request from Dicker?

13 A. Correct.

14 Q. There are some notes on the bottom of this.  
15 Do you know what those are?

16 A. Those aren't my notes.

17 Q. And, do you know what happened as a  
18 consequence of your conversation with Mr. Larabee?

19 A. I assume that he took care of it. I didn't  
20 have any follow-up conversations with either Fred  
21 Dicker or Paul about this. I don't remember even  
22 a story coming out of it, even. So, I really  
23 don't know.

24 Q. So, to your knowledge, nothing further

1 happened?

2 A. To my knowledge, yes. I mean they may have  
3 -- because of my conversation with Paul as we  
4 obtained those documents, turned them over to the  
5 Governor's Office. What they did with them after  
6 that, I have no direct knowledge. Again, the  
7 assumption was they would have been turned over to  
8 Fred Dicker, but I don't know.

9 Q. Okay. And, when you spoke with Mr. Larabee  
10 after the e-mail had he already been in contact  
11 with Fred Dicker?

12 A. I believe so. After the e-mail, yes -- yes.

13 Q. And, so, he asked you to gather the records  
14 and get them to him?

15 A. Correct.

16 Q. And you did that?

17 A. Correct.

18 Q. And, did you advised the Superintendent of  
19 that?

20 A. Absolutely, yes. And that's important in  
21 this because that established a different way of  
22 doing business, if you will, in terms of if the  
23 Governor's Office wanted to be more responsive in  
24 terms of quicker turnaround, at least it didn't

1 put the onus on our agency to change our  
2 procedures, to which my concern was related that  
3 we would be overwhelmed with -- potentially  
4 overwhelmed with requests orally for records that  
5 would make it difficult for us to respond to.

6 Q. So, your understanding was this was a change  
7 in procedure?

8 A. A change in not necessarily in our  
9 procedures. I mean this was a request from the  
10 Governor's Office for documents. If the  
11 Governor's office asks us for documents, I mean we  
12 are part of the Executive Department. But it did  
13 certainly make it easier for us to not have to  
14 respond to a request orally for documents that --  
15 I mean if they insisted that we handle it, we  
16 might have had to handle it that way. But they  
17 did it for us, in essence.

18 Q. But you had not done that previously; you  
19 did not accept oral requests for documents?

20 A. Ever? I don't know if that's the case. I  
21 mean the prior administration routinely, no.

22 Q. Obviously, you are directing Mr. Dicker to  
23 make an oral request for documents, so that was  
24 your practice up until this --

1 A. I directed Dicker to make a written request.

2 Q. Written request, I'm sorry. So, up until  
3 this time that had been your policy was to require  
4 written requests for documents.

5 A. Yes. And because of our conversation -- my  
6 conversation with Paul Larabee this wasn't  
7 changing our policy. The request still didn't  
8 come to our agency. The request went to the  
9 Governor's Office.

10 Q. Prior to your conversation with Mr. Larabee  
11 had it been your practice to give documents to the  
12 executive chamber in response to oral requests?

13 A. From the Governor's Office?

14 Q. Um-hmm.

15 A. If the Governor's Office asked us for  
16 documents, yes. We would give them documents.

17 Q. Had you ever had a situation where a member  
18 of the press had made a request to you and, when  
19 told to put it in writing, had gone to the  
20 Governor's office before?

21 A. Not that I recall -- not that I recall.

22 Q. And, when you spoke to the Superintendent  
23 initially you told him that you had directed this  
24 request to be made in writing; is that correct?

1 A. Correct, yes.

2 Q. And the Superintendent agreed with you at  
3 that time; correct?

4 A. That if it were to come from our agency,  
5 yes, that it should be in writing; that we didn't  
6 want to change our procedures for handling  
7 requests from the media.

8 Q. And, did you discuss with the Superintendent  
9 at that time any correspondence from the  
10 Governor's Office concerning turning over  
11 documents? In your initial conversation with him  
12 did you discuss this request coming potentially  
13 from the executive chamber?

14 A. No, no. I wasn't aware -- there were two  
15 different -- my recollection is there were two  
16 different time periods when I spoke to the  
17 Superintendent; initially, upon the request orally  
18 from Fred Dicker, and then subsequently with the  
19 Superintendent after I had spoken with Paul  
20 Larabee. And they said they would handle the  
21 request if it were okay. And I advised the  
22 Superintendent at that time that the Governor's  
23 Office said they would handle it if we provided  
24 them the document.

1 Q. Why did you go back to the Superintendent  
2 after --

3 A. He is the head of our agency. I would let  
4 him know what was going to be with regards to  
5 this. And if he objected, I mean I would have to  
6 discuss that with the Governor's Office. I mean  
7 he is in charge of our agency.

8 Q. So, this was something new at the State  
9 Police, this type of protocol?

10 A. Especially -- had we ever done that, I don't  
11 recall at this time.

12 Q. For you, this was something new?

13 A. The big thing to recall here is that  
14 Superintendent Felton was only in that position  
15 for approximately two weeks at that point. So,  
16 there were a lot of new things going on and I was  
17 trying to keep him advised and apprised of  
18 everything possible so that he was aware of  
19 anything that might be going on.

20 Q. And, so, you advised him that this request  
21 was being handled in this fashion as an oral  
22 request now from the chamber?

23 A. Correct.

24 Q. And that was something you had not done in

1 the past?

2 A. I had gotten requests to handle things in  
3 the past but not necessarily to turn them over,  
4 not to necessarily say that the executive chamber  
5 would handle them. An example -- I don't have the  
6 exact date. It was under the prior  
7 administration, the Pataki administration. I had  
8 received a request from, I believe, Fred Dicker.  
9 He was asking about -- I might be incorrect on  
10 that. But he tended to be the only one in the  
11 media who would demand documents, if you will, or  
12 information outside of the requesting documents  
13 type protocol. And he was asking specifically if  
14 an individual -- I believe it was Mayor Bloomberg  
15 -- if he had a pistol permit. Normally, that  
16 would be something that you would ask -- you would  
17 do a Freedom-of-Information-Law request for. In  
18 that particular instance I advised the press  
19 office again under the prior administration. And  
20 normally for most reporters they would have wanted  
21 a written request for documents for that. I was  
22 advised to just give it to Fred. Protocols were,  
23 for whatever reason, it seemed that many people  
24 were afraid of Fred and wanted to try and handle

1 things in a different manner for Fred because they  
2 thought Fred might write something negative about  
3 them if they didn't.

4 Q. I am well familiar with Fred's writing.

5 A. Yes.

6 Q. But I am going to ask you again, and I'm  
7 just trying to clarify. From your experience in  
8 terms of producing these types of documents --

9 A. Right.

10 Q. -- this was outside of your normal protocol  
11 to produce these types of documents which are  
12 normally sought in a FOIL request knowing they are  
13 being released to the media?

14 A. Through my office, yes -- yes, um-hmm.

15 Q. And, when you received the request from the  
16 executive chamber, that was not the normal course  
17 of events for producing these documents; is that  
18 correct?

19 A. (Pause) Not to my knowledge. I am trying  
20 to think of examples because I don't deal with  
21 records, the Records Section.

22 Q. I understand that. So, for you to be  
23 dealing with these records is somewhat out of the  
24 ordinary; is that correct?

1       A. For me to be dealing with them; correct.  
2 For me to be turning them over would be out of the  
3 ordinary because normally they would be referred  
4 to our Records Section, correct.

5       Q. Anything else?

6 BY MS. SULLIVAN:

7       Q. On this particular request when you were  
8 treating Fred Dicker was it your understanding  
9 from the Governor's Office that it was limited to  
10 this specific request or was this in the future,  
11 with a future reporter from another paper, would  
12 go -- would you go through the same procedure?  
13 Would you reach out to the Governor's Office for  
14 them to handle it?

15       A. If it was political in nature I would always  
16 advise the Governor's Office of what was going on.  
17 To answer your question, I don't know that I had  
18 an understanding one way or another if this was  
19 isolated or establishing a new way of doing  
20 business, if you will. It seemed like a  
21 reasonable way to handle this particular request  
22 at the time considering that we were avoiding  
23 establishing a precedent in handling these from  
24 our Agency's point of view that could potentially

1 open the doors to anybody asking. I didn't want  
2 to treat Fred any differently than anybody else.  
3 And if they wanted to treat Fred differently, you  
4 know, I felt it was incumbent upon them to maybe  
5 do that themselves.

6 Q. So, in the next week after your conversation  
7 with Paul Larabee you got a request from James  
8 Odato from the Times Union for the same  
9 information, how would you have responded?

10 A. If he had orally requested them to be turned  
11 over I probably -- because they would have been  
12 turned over from the Governor's Office, the same  
13 exact records, I would probably have referred him  
14 to the Governor's Office on those, because they  
15 are the same records. Otherwise, we would have  
16 had to follow our procedures. But, to be  
17 responsive, I would have advised him that I  
18 believe these records were turned over from the  
19 Governor's Office, not my office. Something,  
20 along the same lines, Fred Dicker made a  
21 subsequent request for flight manifest records in  
22 mid July after a lot of this started unfolding.  
23 And he wasn't happy that I told him he would have  
24 to file a FOIL request like everybody else would,

1 again, sticking to that procedure. He argued  
2 that: Wait a minute. You handed these over  
3 before. And I reminded him, no, we did not turn  
4 these over to you outside of that process. You  
5 requested them of the Governor's Office who turned  
6 those over to you.

7 Q. So, did you refer him to the Governor's  
8 Office then?

9 A. I reminded him that's where he got them. I  
10 didn't advise him one way or the other to go to  
11 the Governor's Office.

12 BY THE EXECUTIVE DIRECTOR

13 BY MR. TEITELBAUM:

14 Q. May I ask a question? You had mentioned in  
15 your earlier testimony this morning that there  
16 were some difficulties inherent in responding to  
17 oral requests for documents.

18 A. Um-hmm.

19 Q. Could you just elaborate and tell us what  
20 those difficulties would be?

21 A. My biggest concern at the time was that we  
22 would establish a different way of doing business  
23 and anybody could request voluminous documents and  
24 bog down our Records Section in terms of doing

1 these searches. Whether these particular records  
2 would require other work to be involved, I don't  
3 know. But other -- we would get requests for  
4 records, say, on past investigations which could  
5 be literally thousands of pages. And within those  
6 investigative reports numerous redactions have to  
7 be made and it takes time. So, by just allowing  
8 them to request these orally without going into a  
9 queue, if you will and, you know, having them come  
10 up when their turn arrives in terms of turnaround,  
11 this would make it awfully difficult. And the  
12 media in particular I didn't feel should have any  
13 priority over anybody from the general public.  
14 That is my understanding of what FOIL is all  
15 about. It's the public's right to get these  
16 records. And just because somebody is from the  
17 media, it shouldn't give them access quicker.  
18 That kind of puts it into a sense of order so that  
19 things can be done in an accomplished process.  
20 Outside of that, if I get a request from the media  
21 to my office, if I can be responsive and be  
22 helpful, I think that I should do that. I should  
23 try to help out. Now, at times I go to the  
24 Records Section, and it also can help them as well

1 because it takes it out of their realm of having  
2 to go through this and go through the process of  
3 processing it if it's something that I can say:  
4 Sure, here you go.

5 Q. Apart from what you have just described, the  
6 burden of a lot of work, apart from that  
7 difficulty, would it also be a difficulty in the  
8 sense of document management tracking what  
9 documents are being released, for example? Would  
10 that be a concern yours?

11 A. Of mine, no. Of Records, I would imagine,  
12 yes.

13 Q. Any other difficulties other than what you  
14 have just mentioned?

15 A. Other difficulties?

16 Q. Other difficulties, yes.

17 A. I'm sure there are. Off the top of my head,  
18 I don't know what you might be speaking of.

19 Q. Couldn't the media, for example, create the  
20 very same difficulties you just described by just  
21 giving you a FOIL request? Is there a difference  
22 between getting a written FOIL request for  
23 documents as opposed to an oral request in terms  
24 of response of your agency?

1       A. In terms of being responsive, a written  
2 request would end up going to our Records Section,  
3 go through the process. I don't have all the days  
4 of response memorized, but my understanding is  
5 that within five business days of them seeing it,  
6 they would then have to write the requester a  
7 response of some sort. It wouldn't necessarily be  
8 the release of the documents. It could be: Hey,  
9 you know, you need to clarify this or, you know,  
10 it's going to take awhile. We estimate it's going  
11 to take two months to find and research these  
12 documents to get them prepared and send them out,  
13 something along those lines. So, it puts it into  
14 a process like that. For them to be just orally  
15 given out, it would essentially be putting it to  
16 the top of the heap and saying that it's a  
17 priority just because there are media requesting  
18 it orally.

19       Q. When you had your conversation with Mr.  
20 Larabee in which, I guess from your perspective,  
21 it became apparent that Mr. Dicker was now going  
22 to have his request dealt with by Larabee and not  
23 by the State Police, did you alert Mr. Larabee of  
24 the difficulties that you foresaw in now having

1 requests, perhaps, go through the executive  
2 chamber but ultimately end up with the State  
3 Police having to do the work as you have just  
4 described? Did you alert him to that?

5 A. I pointed out to him in this e-mail that my  
6 concern if we were to have to handle these things  
7 on a regular basis, essentially just open the  
8 doors, that that would bog us down. But I would  
9 assume that if the Governor's Office is requesting  
10 any document from us, I mean that is their  
11 prerogative. I wouldn't necessarily question  
12 that. I would assume, again, that it wouldn't be  
13 for every single type of request. But, again,  
14 that would be their prerogative. If they ask for  
15 documents I mean it's the Governor's office  
16 saying: We would like these documents. I don't  
17 say, well --

18 MR. TEITELBAUM: I'm sorry. Continue.

19 A. I have expressed my concern as far as our  
20 own agency establishing a different precedent in  
21 terms of responding to these FOIL law requests  
22 directly. But, for them to -- I mean they are  
23 also putting themselves in a difficult position in  
24 terms of volume by handling it this way. And I

1 would assume that they would have to be selective  
2 on how often they chose to use this process by  
3 requesting this and handling it themselves,  
4 whether or not it's through a formal FOIL process  
5 or an oral request because they are dealing with I  
6 don't know how many dozens of state agencies in  
7 the same manner. I mean that's -- but for them to  
8 have to do that every single time, that would  
9 become cumbersome on them. I would figure it  
10 would be more cumbersome to them than it might be  
11 to us. But if they wanted to choose to do that,  
12 it would be their prerogative.

13 Q. The consequences that you have just  
14 described that would befall the executive chamber  
15 would also, of derivative basis, befall the State  
16 Police, would it not, because if the executive  
17 chamber is being subjected to significant numbers  
18 of requests for State Police documents and then  
19 the executive chamber turns to the State Police,  
20 to you and your colleagues and says: Get us those  
21 documents; we have an oral request, you are in the  
22 same position; aren't you?

23 A. This is a little bit of a situation because  
24 of the individual we are dealing with. Most

1 reporters -- I'm trying to think of an example  
2 where I have not had a reporter just follow the  
3 normal FOIL request or not refuse to follow the  
4 normal FOIL request when requested to do so. If I  
5 say to a reporter, well, you need to follow this  
6 request, they follow it. Fred is the only example  
7 that I can think of who just outrightly thinks  
8 he's special and doesn't have to follow it. All  
9 the more reason why he would want to try and go  
10 over my head, so to speak, and handle it in a  
11 different way. It would be their prerogative to  
12 handle it differently if they wanted to. But, no.  
13 I don't see that as overwhelming the process,  
14 because like I said, most of the reporters -- and  
15 I can't think of other examples outside of Fred  
16 who don't follow this process. They're decent  
17 about this.

18 Q. When Mr. Larabee asked you for the records  
19 did you consider that a request for records of the  
20 State Police by the executive chamber?

21 A. A request for records -- an interagency  
22 request. If you want to put it in the plainest  
23 sense, I could consider it a demand. Was it done  
24 in a demanding way, in a demanding manner, in a

1 disrespectful manner, no -- no.

2 Q. Is there a reason why you didn't ask for  
3 that request in writing from the executive  
4 chamber?

5 A. I don't see why I would need to have that  
6 request in writing. It never occurred to me that  
7 I would need a request from the Governor's Office  
8 in writing. They are our supervisors. They are  
9 our bosses. I don't demand that from any of my  
10 supervisors. I have never heard of anybody  
11 demanding of their supervisor a request in  
12 writing.

13 Q. The reason I'm asking you is, were you  
14 interested at all in having a paper trail  
15 indicating that documents were leaving the State  
16 Police and going to some other entity within the  
17 government?

18 A. If the Governor's Office requests something  
19 from us, I mean that's incumbent upon them to  
20 maybe be concerned about a paper trail. I mean we  
21 work for them.

22 Q. If it were another agency other than the  
23 executive chamber would you have requested it in  
24 writing for the documents?

1       A. I'm not sure what the requirements are for  
2 interagency. I don't know that FOIL even applies  
3 to interagency requests.

4       Q. Putting aside FOIL; just the releasing of  
5 documents.

6       A. I don't know. You would have to check with  
7 our Records Section.

8       Q. If I went to the State Police offices now  
9 and looked for a document that recorded what you  
10 gave to Larabee would I find one?

11      A. Recorded what I gave to Larabee?

12      Q. Yes.

13      A. No. I don't believe so, no.

14 BY MS. TOOHER:

15      Q. When you provided those documents did you  
16 review the documents before you gave them to him?

17      A. I did not.

18      Q. So, they were just the documents as they  
19 came from Kern Swoboda?

20      A. I believe so, yes.

21      Q. And, to your knowledge, did anyone review  
22 those documents?

23      A. To my knowledge, no. From the State Police  
24 level, to my knowledge, no.

1 Q. When you provided them to Paul Larabee you  
2 knew he was going to be providing them to Fred  
3 Dicker; that was your understanding?

4 A. My assumption was, yes.

5 Q. And you indicated in the past when you had  
6 released aviation records or other records that  
7 there were issues as far as redaction is  
8 concerned. Were any redactions done on the  
9 records that were provided to Mr. Larabee?

10 A. Not to my knowledge.

11 Q. Were the documents reviewed to determine, to  
12 your knowledge, whether redactions were necessary?

13 A. Not to my knowledge.

14 Q. If documents were being given to Mr. Dicker  
15 would they have been reviewed to see if redactions  
16 were necessary?

17 A. For those particular records, I don't  
18 believe so.

19 Q. Because the aviation records don't require  
20 redaction?

21 A. There is nothing in there that, to my  
22 knowledge, would necessarily require redaction,  
23 but I don't know.

24 Q. And after you had the request from Mr.

1 Dicker what was the next instance where you were  
2 dealing with requests for records for information  
3 concerning the manifests?

4 A. You are talking about the March incident?

5 Q. After the March incident.

6 A. After the March incident -- requests for  
7 records, you are asking specifically?

8 Q. Um-hmm.

9 A. It is possible that other requests were  
10 directed to our Records Section. I don't recall  
11 any particular requests.

12 Q. Directed to you?

13 A. Directed to me, correct.

14 Q. And, there was an article in the Times Union  
15 on July 1st concerning, in part, your records from  
16 the Aviation Unit and concerning the airplanes.  
17 Are you familiar with that article?

18 A. Yes.

19 Q. And, can you tell me in sum and substance  
20 what your reaction to the article was?

21 A. Well, prior to that article appearing I had  
22 received requests via telephone from Mr. Odatto who  
23 wrote that story.

24 Q. Requests for what?

1       A. Requests -- he wanted pictures of the  
2 aircraft, of the helicopters. And we were trying  
3 to set up something where one of his photographers  
4 would be able to come out to the airport and take  
5 a picture of the helicopter. And we weren't able  
6 to -- I think one of the helicopters was being  
7 stripped for maintenance and another one was out  
8 of town. We were working on that. Somehow, we  
9 ended up getting him either a picture. My biggest  
10 concern was the tail number being shown. And I  
11 remember relating that to him. He was also asking  
12 about costs to land at the New York City helipads,  
13 what payments needed to be made. I asked some of  
14 our people about those. I don't remember what the  
15 costs were, but I related that to Mr. Odató. He  
16 was also asking about, if I recall, costs for  
17 actual flying of the aircraft. And I told him we  
18 didn't do estimates, but I referred him to a  
19 resource known as Conklin and Dedecker who does.  
20 It's a professional aviation resource that does  
21 estimates of flight costs. I referred him to a  
22 publication -- there's a book they publish which  
23 could have those answers. But I told him we  
24 couldn't compile it because they have different

1 costs and don't keep track of individual costs, et  
2 cetera. I did ask him on that point. This was  
3 probably Thursday, Friday, possibly the Wednesday  
4 prior to his story. So, June 28th - 29th, right  
5 around there he was asking these questions. And,  
6 of course, I was curious about where he was going  
7 with this. I asked him what his story was about.  
8 And he said he was doing a story on executive  
9 flights. That's how he worded it.

10 I was in contact with Paul Larabee to  
11 let him know that this was what Odatto was asking  
12 about. And there was a good exchange because of  
13 the recurring story all the time. Usually it was  
14 about the Governor and the Governor's flights. I  
15 assumed that he was looking into that. I don't  
16 recall anything specific about Bruno at that  
17 particular time.

18 Q. When Odatto called you did he say anything  
19 more about his article than he was working on  
20 executive flights?

21 A. He said "executive transport." I don't  
22 recall him naming names. I assumed it was  
23 probably about the Governor and perhaps Senator  
24 Bruno. I don't recall. He might have mentioned

1 Senator Bruno, but at that point I really didn't  
2 -- I didn't have any -- I don't really have a  
3 recollection. I assumed it was more about the  
4 Governor because that's what the stories have  
5 always been about. And when I called Paul Larabee  
6 to let him know that, hey, this is what he is  
7 looking for and this is what I am telling him,  
8 this is where I am directing him for cost  
9 information, et cetera, he acknowledged that okay,  
10 I understand what you are saying. He didn't give  
11 me direction one way or another on this, nor did  
12 he relate any additional information about  
13 anything else at that point in time.

14 Q. Did he indicate he was aware that Odatto was  
15 doing an article?

16 A. Not that I recall. You know, there might  
17 have been a couple of exchanges where, you know,  
18 when he called about the tail number. I told him  
19 we were concerned from a security standpoint about  
20 the tail number being shown in pictures. I might  
21 have related that to him in case --

22 Q. Related it to Larabee?

23 A. Yes, because I would know that Odatto would  
24 likely be in contact with the Governor's Office as

1 well on some of this stuff because he wasn't  
2 asking me very many questions about any specific  
3 flights or anything like that. So, it was more  
4 about costs.

5 Q. So, you just gave Larabee a heads-up? You  
6 didn't says: I'm aware of this. Did he indicate  
7 he had spoken with Odado?

8 A. Not that I recall -- not that I recall.

9 Q. Did you reach out to Bill Howard at that  
10 time?

11 A. No. I assumed that Paul and Bill would have  
12 been in communication with each other if that was  
13 an issue.

14 Q. And did you have any further contact from  
15 Odatto prior to the article?

16 A. I believe it was those three or four related  
17 issues. But, no, I don't recall any other contact  
18 prior to the article.

19 Q. So, he contacted you three or four times?

20 A. Yeah, two or three or four times. It was,  
21 again, wanting to set up a photographer at our  
22 helipad. And I probably called him back two or  
23 three times to set that up where the photographer  
24 would be able to come down to our hangar at the

1 airport and then regarding the cost of landing.  
2 And -- I don't remember if that was a separate  
3 call or a separate question. But I had two or  
4 three or four phone calls all relating to costs of  
5 landing at the helipad and the per hour cost that  
6 he directed him to this other resource.

7 Q. How many times did you call Mr. Larabee?

8 A. Once or twice, I believe, just to let him  
9 know. The initial call might have been, like I  
10 said, Wednesday or Thursday. I don't remember.  
11 And I believe that was to set up the picture and  
12 let them know, hey, they are going to take a  
13 picture of our helicopter and this is what we are  
14 attempting to do on probably on Thursday and/or  
15 Friday. I don't remember exactly which day to let  
16 him know he is looking at cost information just as  
17 a heads-up. It may have been all one call. I  
18 honestly don't recall.

19 Q. That was your last contact with either  
20 Larabee or Odatto before the article?

21 A. Before the article, yes.

22 Q. What was your reaction when you saw the  
23 article?

24 A. It really didn't -- nothing stood out that

1 day to me. I read it in the Sunday paper, and I  
2 am probably didn't.

3 Q. Did you say that is what I was calling  
4 about?

5 A. Yes. I assumed it was about the aircraft.  
6 And it looked like other information had come out,  
7 and I assumed it was from the Governor's Office  
8 then.

9 Q. When you say "other information had come  
10 out" what are you referring to?

11 A. Specifically, about flights specific to  
12 Bruno, about Bruno's flights, because obviously  
13 that had not come through my office. So, I  
14 assumed that had come from the Governor's Office.

15 Q. Why did you assume it came through the  
16 Governor's Office?

17 A. Because it didn't come from our office; I  
18 mean, some other source.

19 Q. Did you reach out to the Superintendent at  
20 all?

21 A. No, not at that point.

22 Q. Did you reach out to him at any point?

23 A. This was Sunday. I don't remember if I  
24 called him on Sunday. I got two or three -- I'm

1 trying to remember what it was about. I got an --  
2 I think Paul Larabee left a couple of messages  
3 with me on Sunday to return calls of reporters.  
4 And I don't remember -- oh, it was about -- I  
5 believe it was about Bruno's security threat  
6 assessment because this story kind of evolved.  
7 Initially, I believe the Senator was defending his  
8 use of the aircraft by stating that he had --  
9 there had been death threats made. And, if I  
10 recall, Paul had directed to reporters -- it took  
11 several phone calls regarding that to me, I  
12 remember, on my voicemail on my phone. I remember  
13 calling back the reporter telling him I didn't  
14 have any information; it's Sunday and I don't have  
15 any way to look up that information.

16 Q. By "that information" what do you mean?

17 A. I mean any death threats to Senator Bruno,  
18 what security was, et cetera.

19 Q. Do you generally give that information out  
20 concerning public officials?

21 A. Generally not, no.

22 Q. Have you ever given that information out?

23 A. About specific threats, no. Generally, we  
24 might say: Yes there, have been some concerns

1 brought to your attention by -- and I believe this  
2 may have been the wording that I used to one of  
3 the papers. There have been concerns over the  
4 Senator's safety because of the events that we  
5 have investigated or have been brought to our  
6 attention of. Very generally, but specific  
7 threats generally we wouldn't discuss.

8 Q. And when you say you had given that  
9 information out in the past, who have you given  
10 that information out about in the past?

11 A. Oh, in the past, I don't know. It's  
12 something that we wouldn't necessarily as a  
13 general rule we wouldn't talk specific security  
14 measures. But, generally, there wouldn't be  
15 problems or a problem affirming or confirming that  
16 yes, we have some concerns. Whether it's -- well,  
17 one example was regarding former Governor Pataki  
18 in January. If you remember, there was some  
19 concern why we were continuing a security detail  
20 for the Governor beyond his tenure as Governor.  
21 And I believe we confirmed that there were some  
22 other issues then. But, again, nothing specific.

23 Q. Did you confirm that?

24 A. With the media?

1 Q. Yes.

2 A. I don't recall. I have -- I don't recall.

3 Q. Have you ever discussed with the  
4 Superintendent or any of your supervisors the  
5 information that should be given concerning  
6 threats?

7 A. Yes.

8 Q. Who did you have those conversations with?

9 A. The Superintendent.

10 Q. And, what did he advise you?

11 A. Okay. Which are we talking about, generally  
12 or specifically, with this particular instance?

13 Q. We can do both. Let's start with generally.  
14 Did you have a conversation with the  
15 Superintendent concerning release of information  
16 involving security issues for particular public  
17 officials?

18 A. Particular public officials -- I can't think  
19 of a specific example. But, well, with Pataki,  
20 yes. I don't remember exactly what was stated. I  
21 would have to go through and do a search of the  
22 newspapers and find out what we discussed. But  
23 back then that would have been former  
24 Superintendent Bennett at the time.

1 Q. So, you discovered release of information  
2 concerning security?

3 A. Whether or not we would comment one way or  
4 another, yes.

5 Q. What was decided?

6 A. The same thing would apply back to my  
7 security measures we had taken for an event. And  
8 after 9/11 people were asking: How many troopers  
9 are you going to have at such-and-such a point or  
10 what measures. And I would say: Look, we can't  
11 discuss the specific measures to put it bluntly.  
12 Then, the bad guys know what we are doing, and  
13 that defeats the purpose of security. But I would  
14 say, generally, we have increased our number of  
15 personnel, our measures, in very general terms.  
16 That would apply similarly to what we would  
17 release about whether or not a government official  
18 was receiving specific threats or not.

19 Q. And, did you have a conversation with  
20 Superintendent Felton now about Senator Bruno?

21 A. Yes.

22 Q. And what was the substance of that  
23 conversation?

24 A. Well, the timing of that would have been

1 subsequent to the Sunday, July 1st article because  
2 the questions that were coming from the media  
3 were: Was there ever a threat assessment done?  
4 You know, all of those types of things. I did  
5 discuss it with the Superintendent. He then  
6 referred me to Inspector Gary Berwick who was the  
7 former head of security down at the Capitol for  
8 Governor Pataki. So, he was more involved with  
9 threats to government officials, if you will, in  
10 recent history.

11 Q. But what was the Superintendent's direction  
12 to you?

13 A. In terms of what to say?

14 Q. Um-hmm.

15 A. That we would -- I am trying to remember  
16 what the specifics were; that we had not done a  
17 formal threat assessment, that we had concerns  
18 over specific incidents which we wouldn't discuss,  
19 concerns over the senator's -- for the senator's  
20 safety that were brought to our attention by the  
21 senator's staff.

22 Q. Now, when you say you had not done a formal  
23 threat assessment what was your understanding of  
24 what that meant?

1       A. An overall evaluation looking at threats  
2 from the past going back how many years. My  
3 understanding is that threat assessments, the  
4 formal threat assessments were a fairly recent  
5 type of construct coming out of the whole -- Mr.  
6 Hevesi's assertion that he needed protection for  
7 his wife regarding the transporting of his wife,  
8 et cetera. And I don't recall the agency that was  
9 reviewing that, but to determine that a threat  
10 assessment should be conducted. Well, there had  
11 never, prior to, been a formal threat assessment  
12 by our agency conducted. So, my understanding is  
13 that our people looked at what other agencies,  
14 specifically New York City does for threat  
15 assessment type work and that we would try to  
16 follow a procedure that would be similar to what  
17 they would follow. But in the prior circumstances  
18 prior to this happening that these were  
19 essentially based on whether the Superintendent --  
20 based on other information received from our  
21 executive -- I am trying to use the term -- our  
22 executive services protection. I'm not using the  
23 right term -- basically, the people charged with  
24 protecting the Governor and other executives, what

1 their assessment would be and whether or not an  
2 individual should have protection on a case by  
3 case type basis. It may not be long-term. It  
4 could be short-term, for instance. But that would  
5 be based on an individual instance possibly, but  
6 not if a formal overall type assessment, if you  
7 will, had not been done prior to that. That is my  
8 understanding.

9 Q. And the Superintendent related to you that  
10 you could discuss this with the press?

11 A. No.

12 Q. What did the Superintendent relate to you at  
13 that time?

14 A. He related to me that I could state that a  
15 formal threat assessment had not been conducted  
16 for Senator Bruno; however, we had been concerned  
17 because of specific threats brought to our  
18 attention for his safety. We had some legitimate  
19 concern for his safety based on specific threats,  
20 but that I couldn't go into detail or discuss  
21 those.

22 Q. And, obviously, you had a lot of press  
23 interest in this story and in this particular  
24 issue?

1 A. Correct.

2 Q. Did you have any contact at that point with  
3 the Governor's Office?

4 A. I'm sure I did. It would have been just to  
5 kind of give a heads-up of what type of inquiries  
6 I am getting and how I am answering those  
7 questions.

8 Q. And did you receive any contact from Mr.  
9 Larabee around that time frame?

10 A. I am certain I did. I don't recall  
11 specifically what it was.

12 Q. Do you remember him reaching out to you at  
13 all concerning the whole security issue and  
14 comments on that issue?

15 A. Him reaching out to me?

16 Q. Yes.

17 A. I'm sure we discussed -- I'm sure we  
18 discussed it, yes. I don't recall what  
19 specifically that would have been. Look. As I  
20 said, the story evolved. Initially, it was about,  
21 you know -- I believe at some point during those  
22 -- whether it was Monday or Tuesday -- the  
23 Governor I think called for a threat assessment to  
24 be done for Senator Bruno to determine whether he

1 needed security. So, that was kind of part of  
2 where that was going. Then, some of the inquiries  
3 -- well, has that been conducted yet. And my  
4 answer is: No. It takes time to conduct a threat  
5 assessment. Would we discuss it, I don't know,  
6 things that were very general questions at that  
7 point in time that I recall.

8 (Commission Exhibit 7 was marked for  
9 identification.)

10 Q. I am going to show you what has been marked  
11 as Commission Exhibit 7. And, the top part of  
12 this e-mail is an e-mail directed to you --

13 A. Um-hmm.

14 Q. -- concerning a Liz Benjamin looking to  
15 speak with you on the story and documents on  
16 security issues. Do you recall this e-mail?

17 A. I remember this, okay. Yeah, I remember Liz  
18 Benjamin returning -- I remember returning her  
19 call. This is one of the messages or voice mails  
20 that I had gotten -- maybe it was an e-mail then.  
21 I don't remember that part, "all same standards  
22 apply." I might have told them at that point that  
23 I didn't have any information on it. This is  
24 early on. This is Sunday afternoon, it looks

1 like. And I had no one from our agency to discuss  
2 what security measures we would have taken or what  
3 we had done to that point. Would I be telling  
4 reporters -- And, what I probably told Paul is  
5 that I didn't have any information to tell anybody  
6 one way or the other at that point until I spoke  
7 with our own people about what has been done.

8 Q. You don't know what he might be referring to  
9 by "All same standards apply; no comment on  
10 security issues"?

11 A. I don't recall.

12 Q. You may not have actually received this. He  
13 may have really -- there were apparently delivery  
14 status, but apparently "all same standards" to me,  
15 indicates that he did speak to you at some point  
16 and it's curious as to what "those standards"  
17 might be?

18 A. It doesn't even look familiar to me. I  
19 don't know what standards -- the only thing I can  
20 guess is that I might have told him that I don't  
21 have any information at this point in time  
22 regarding our security. But I don't know what  
23 "standard" would be.

24 Q. What about, "No comment on security issues"?

1       A. Again, I don't remember ever seeing that, so  
2 I don't know. I remember calling Liz and I  
3 remember, you know, Liz asking me questions. And  
4 I was telling her: Look, I can't get any of the  
5 information you are asking for today. You are  
6 going to have to wait until tomorrow." And, she  
7 agreed that, okay, that's reasonable. How would I  
8 know anything or who would he even go to at this  
9 point.

10       Q. There did come a time that you reached out  
11 to gather that information?

12       A. The following day when I spoke with the  
13 Superintendent.

14       Q. Did you speak to anyone besides the  
15 Superintendent?

16       A. Within our agency?

17       Q. Correct.

18       A. Gary Berwick, the Inspector, I was speaking  
19 with.

20       Q. Who did you speak to in the media?

21       A. In the media -- there were articles in the  
22 next day. Probably Liz, probably the New York  
23 Times. I remember there was an article in the New  
24 York Times. I don't remember Joe Mahoney

1 bothering me about this, but he might have.

2 Q. Did you speak to anyone in the Governor's  
3 Office?

4 A. On Monday?

5 Q. Yes.

6 A. I'm sure I did.

7 Q. Do you recall discussing the issue of  
8 security?

9 A. I would have told them that -- what my  
10 discussions were with the Superintendent and this  
11 is what I am saying. But what specifically that  
12 was, I mean -- again, I wish I had brought my  
13 notes with me from the last time. It would have  
14 been just along the lines of, you know, that  
15 regarding that no formal threat assessment had  
16 been done for Senator Bruno and that we did have  
17 some concerns based on specific instances that  
18 were brought to our attention by his staff but  
19 that I wouldn't be able to discuss those  
20 specifically.

21 Q. And that direction came from the  
22 Superintendents?

23 A. Yes, um-hmm.

24 Q. And did there come a time where you became

1 aware of the documents that the Times Union had in  
2 their possession?

3 A. Monday, because of the article, I mean I  
4 read through the Sun article initially, not really  
5 thinking much of it. It's just another article on  
6 flights is the way I initially looked at it. And  
7 until I started getting some inquiries about --  
8 because of Senator Bruno defending his stance as  
9 far as from the security issue, I was looking at  
10 the security side of it. And then, on Monday,  
11 looking at the article again, the reference I  
12 believe in the article to "flight manifest  
13 records," I was curious and I asked Sergeant  
14 Swoboda in my office. I said, "Did we get an a  
15 FOIL request? Did anything come through our  
16 office for flight manifest records?" I thought  
17 these were from older requests, but these  
18 references were something more recently, it  
19 looked like, and he had no knowledge of it.  
20 Because normally, if we had gotten something or if  
21 records had gotten something, they would give us a  
22 heads-up on this. So, I had no knowledge of that.

23 I then went to the Superintendent and  
24 asked him about, you know, these records. Why are

1 they referring to a FOIL request if we didn't get  
2 one? And he explained to me it was his  
3 understanding that the Governor's Office had  
4 received a FOIL request and that this is what this  
5 is referring to, even though it was regarding the  
6 flight manifest records. And at that point it was  
7 around the same time period that he had discussed  
8 -- he had explained that to me and the threat-  
9 related stuff we issued or shouldn't say.

10 Q. And, there came a time when you were aware  
11 that there were other records beyond the flight  
12 manifest records?

13 A. Yes. And I don't remember if it was that  
14 same Monday or the following day on Tuesday, the  
15 Superintendent mentioned that are there were other  
16 -- how did he word it -- itinerary information or  
17 other records relating to itineraries. I don't  
18 recall him being specific about who they were  
19 about. Again, I assumed some of them were about  
20 Senator Bruno. He also explained to me at that  
21 time that we didn't have possession of all the  
22 itineraries and that some of those that were  
23 missing, we synopsisized because the Governor's  
24 Office had requested that information.

1 Q. And, in your experience had you synopsised  
2 records like that before?

3 A. "Like that" --

4 Q. Had you ever seen records like that before?

5 A. I never even saw these. I went to -- by  
6 about July 4th I realized here they are talking  
7 about all of those and this is an ongoing story.  
8 And I went to look at the records on the Times  
9 Union's web site where apparently they were  
10 displayed. And I couldn't find them at that point  
11 in time, and I thought maybe I should look at what  
12 the heck they are talking about here. And I never  
13 in fact, have seen them since. I have no idea  
14 what they even look like.

15 Q. When you spoke to the Superintendent about  
16 these records did he relate any impression to you  
17 about the story or the records that it contained?

18 A. Story --

19 Q. The Times Union article, and then the State  
20 Police records that were contained.

21 A. Though it was more just responsive. It was  
22 not really a discussion. He related to that; the  
23 Governor's Office had requested these records from  
24 the State Police very similarly to what we had

1 done prior with the Fred Dicker type thing.

2 Q. And he just volunteered that information?  
3 Did you ask him anything about where the records  
4 came from or where the documents had come from?

5 A. They are flight manifest records, State  
6 Police records.

7 Q. Not the flight manifest records, now, the  
8 individual itineraries.

9 A. I was not familiar. I'm not familiar with  
10 every single type of record that the State Police  
11 keeps. So, I made the assumption that there was  
12 some sort of record; whether it was ours or not.

13 Then, as I was getting more inquiries  
14 from the media about where these came from, I  
15 asked him questions about, you know, what these  
16 were. That's when he explained to me that these  
17 were itineraries that were given to State Police  
18 for purposes of knowing where to make stops and  
19 that the Governor's Office had also had itinerary  
20 type information as well for the Governor and the  
21 Lieutenant Governor, and that on three particular  
22 instances that the Governor's Office was asking  
23 for regard Senator Bruno, that we didn't have his  
24 itinerary for whatever reason. Either it wasn't

1 given to us or, for whatever reason, we didn't  
2 have it. So, they were synopsisized, the stops were  
3 synopsisized and that information was then given to  
4 the Governor's Office.

5 Q. Did a report on this discuss the process of  
6 synopsisizing documents and indicate that the  
7 Superintendent testified he's angry when he saw  
8 these documents in the media? Did he express that  
9 to you at all.

10 A. Anger about them being there, no, not anger.  
11 I mean I think he was -- he seemed a little bit  
12 surprised that something other than, you know, the  
13 flight manifests might be there. I am going on an  
14 -- I mean interpreting something other than words,  
15 so that's probably not --

16 Q. Your impressions?

17 A. Yes. My impression, but he didn't express  
18 that. He was angry over this. He was doing his  
19 best to give me the information I needed to  
20 describe what these records were. But, that and  
21 beyond that, that we turned these over to the  
22 Governor's Office, and I stated that numerous  
23 times in different articles that these were --  
24 this information was turned over to the Governor's

1 Office at their request.

2 Q. These were previously marked. I am just  
3 going to show you -- for purposes of the record,  
4 these were previously marked as Commission  
5 Exhibits 1 through 5, and they are the  
6 transportation assignments for Senator Joseph  
7 Bruno. I am just asking you to clarify if you  
8 have ever seen these documents.

9 A. No. I have never seen any of those.

10 Q. I am just going to ask you if you could take  
11 a look and see if you are familiar with this type  
12 of document in the State Police.

13 A. I am not.

14 Q. I'm going to ask you if you would release  
15 this type of information to the press.

16 A. This is a little after the fact. Yes, after  
17 the fact it might be released. But, again, that  
18 wouldn't be up to me. That would be up to our  
19 records people.

20 Q. So, if you had these documents in your  
21 possession and someone asked to review them, would  
22 you make a determination to release them or would  
23 you --

24 A. It wouldn't be my determination to make.

1 Q. Who would you go to?

2 A. It would usually be because it appears to be  
3 a record of ours, our Records people, or in  
4 consultation with Counsel's Office.

5 Q. And, to your knowledge, you never received  
6 any inquiry on these specific documents?

7 A. I don't know if they are referring to those  
8 specifically or not. I'm not really sure what  
9 those are. If those are what I was referring to  
10 via the Superintendent's explanation of synopses,  
11 then yes.

12 Q. These are the documents, at least three of  
13 those documents were contained in the Times Union  
14 blog --

15 A. Okay.

16 Q. -- and publicly disseminated. I don't know  
17 if you have had an opportunity to see them or not.

18 A. I didn't, so I don't know.

19 Q. And, did you ever receive any instruction  
20 from the Superintendent concerning commentary on  
21 this area after the article?

22 A. As I explained, with regard to threat  
23 assessments -- with regards to what?

24 Q. The Bruno article.

1 A. Just generally?

2 Q. Um-hmm.

3 A. I was responding to any media requests I  
4 received. If it was not something that I already  
5 had commented on or had some direction on already  
6 from the Superintendent I would advise the  
7 Superintendent for direction on something like  
8 that to make sure, if it was something I had no  
9 knowledge of -- which was most of this -- I would  
10 get direction from the Superintendent.

11 MS. TOOHER: I am going to ask that you  
12 mark this as Commission 8.

13 (Commission Exhibit 8 was marked for  
14 identification.)

15 Q. I am going to show you what has been marked  
16 as Commission 8. It's a one-page document, an  
17 e-mail from you to William Howard which indicates:  
18 FYI, Superintendent Felton has requested that I  
19 not answer any questions that might be related to  
20 the Bruno matter until the current reviews are  
21 completed."

22 A. Right. That's the following week. I  
23 thought we were still in the earlier stages of  
24 this. Yes, approximately the Fourth of July, I

1 think was a Wednesday. Probably around Friday we  
2 were getting numerous inquiries asking the same  
3 stuff all over again from different reporters,  
4 people that weren't following this earlier on.  
5 And, all of a sudden said: This might help sell  
6 papers. So, at that point in time, rather than  
7 continue to comment on these things because  
8 different reviews were requested --  
9 reviews/investigations were going to be conducted,  
10 it wouldn't be prudent to be putting more stuff  
11 out into the media that could possibly be  
12 counterproductive to the investigations. So, yes.  
13 At this point in time I let the Governor's Office  
14 know that, hey, I'm not going to be answering  
15 anything more on this because of this. This is  
16 the direction. I remember that.

17 Q. What was the instruction from the  
18 Superintendent?

19 A. What was the instruction?

20 Q. Yes.

21 A. That there are several investigations -- I  
22 don't remember how many were called for at that  
23 point in time, but that we shouldn't comment on  
24 any at this point until those are concluded.

1 Q. And, did he give you that in writing or --

2 A. That would have been oral.

3 Q. Did he call you in his office by telephone?

4 Do you recall how that occurred?

5 A. It probably would have been conversations.

6 I walked into his office quite a bit when there's  
7 stuff ongoing. So, it only would have been face  
8 to face. At about the same time -- I don't know  
9 -- give or take a few days. Glenn Valle, our  
10 Counsel, also issued a memorandum along the same  
11 lines stating that, you know, that we should not  
12 be responding to media inquiries regarding this  
13 because there are investigations that are going to  
14 be conducted.

15 Q. And you sent this e-mail to Bill Howard?

16 A. Um-hmm.

17 Q. Were you in contact with him on this issue  
18 concerning the whole --

19 A. Yes, both he and Paul Larabee. I mean  
20 sometimes I would be able to get holds of one and  
21 not the other. But my understanding was that they  
22 were in communication with each other and the  
23 press office.

24 Q. Do you recall what you were communicating

1 with Bill Howard about in that time frame?

2 A. It would have been the same types of things  
3 I would -- I'm surprised I didn't cc Paul on this  
4 because normally I would, you know, try to cc them  
5 both on what was going on. That was my  
6 recollection in terms of how I was responding. On  
7 July 4th there was an article that started going  
8 into questioning what these were, et cetera. So,  
9 on July 5th, the day after the Fourth of July the  
10 story kind of changed into what are these. This  
11 is the whole New York Post angle that we were now  
12 spying on the Senator. So, I believe it was on  
13 the 5th that communicating with Bill Howard, there  
14 are probably e-mails on this -- that I was told  
15 that Darren Dopp was going to issue some sort of a  
16 statement. And I had received a couple of  
17 inquiries in the interim and I wanted to be  
18 consistent with whatever he was saying. And they  
19 told me to hold off until Darren made the  
20 statement because it would probably take care of  
21 these inquiries. And, at some point I e-mailed  
22 Bill to find out, hey, has the statement been  
23 released? What is it? And he followed up with  
24 another e-mail on that date giving me a copy of

1 what the statement was. And it was a general type  
2 statement so, yes, I had some communication with  
3 Bill regarding that. But that was the extent of  
4 it.

5 Q. And, did you talk to him about the document  
6 at all during this time frame?

7 A. I don't think I did. I think any knowledge  
8 of the documents to my recollection was from the  
9 Superintendent.

10 Q. Did you talk with Paul Larabee about the  
11 documents at all?

12 A. I don't believe -- so, I mean other than  
13 just went on the same general -- I'm trying to  
14 remember how. The only thing I would have said is  
15 that, hey, the media is asking what these are.  
16 I'm explaining that they are flight manifests and  
17 itineraries as well as synopses of days that were  
18 missing from the itineraries. I would have  
19 communicated that to Paul and/or Bill either  
20 verbally or through e-mail.

21 (Commission Exhibit 9 was marked for  
22 identification.)

23 Q. Just so the record is clear, I am going to  
24 show you a two-page document that has been marked

1 as Commission Exhibit 9. The first page is an  
2 e-mail from William Howard to you. And the second  
3 page is a statement -- is the same, and  
4 communicates what you were referring to earlier,  
5 that yes, it looks like something just attached to  
6 the e-mail which would be the statement?

7 A. Yes, um-hmm. That's on the 5th; correct?

8 Um-hmm.

9 Q. And Bill Howard provided this to you?

10 A. Yes.

11 BY MS. SULLIVAN:

12 Q. A quick follow-up. You said earlier, prior  
13 to the July 1st article, James Odatto called up and  
14 wanted to photograph the helicopter. But you had  
15 a concern about the tail number being shown in the  
16 photograph?

17 A. Right.

18 Q. Why?

19 A. From a security standpoint, if you were to  
20 publicize that, whatever tail number was, or  
21 several tail numbers were or were not, the actual  
22 aircraft being used to check transport so  
23 potential terrorists could target that helicopter.  
24 We have got like, as I said, 19 aircraft, I

1 believe eleven helicopters. And some of them look  
2 very similar to the executive aircraft. And I  
3 think that's what actually happened. But you  
4 allowed them to photograph one that wasn't an  
5 executive aircraft. Most people wouldn't know the  
6 difference from just looking at it. But what they  
7 were specifically asking for was one of the  
8 aircraft that was being used for executive  
9 transport. And that's why my concern was if they  
10 were writing in the article that this is the  
11 actual aircraft used to transport the Governor  
12 and/or Senator Bruno, that's not -- I mean anybody  
13 somewhere around here who might want to target  
14 could use that.

15 Q. So, that information is not contained in the  
16 flight manifest?

17 A. It would be.

18 Q. That is disclosed?

19 A. Yes. That was also a concern. But you  
20 realize that you throw a picture up there, the old  
21 adage is 1,000 words when you throw a picture up  
22 there. Now, they are looking at a number. For  
23 someone looking through the flight manifest,  
24 someone would have to be looking at that

1 specifically. The idea wouldn't pop up as easily  
2 and it wouldn't be anything that you could prevent  
3 the Times Union from doing.

4 Q. So, it was just a question of you recognize  
5 the fact that that posed a security concern?

6 A. Yes. It may be the Superintendent that  
7 mentioned that we prefer the tail number not being  
8 in the picture. If they were to say: This is one  
9 like the one they used, they could eliminate that  
10 one pattern.

11 Q. Is there other information regarding  
12 transportation of a public official that would  
13 cause you to have concerns about it being released  
14 to the public?

15 A. It's just a real general -- I'm not sure.

16 Q. That was one example, the tail number.  
17 Would there be other information that you would  
18 protect?

19 A. Theoretically, any of that stuff could be --  
20 I mean like I said, there wasn't -- we can prevent  
21 him. This was just a request by Odato; hey, this  
22 is a picture. It could be very obvious to someone  
23 who doesn't speak our language to target this.  
24 So, some of the things are more obvious than

1 others. But, theoretically, probably anything  
2 could be of concern. But how far do you go? I  
3 mean we didn't have anything -- that wasn't of  
4 such concern that we would say no; no, you can't  
5 photograph this helicopter.

6 Q. But that was the subject that you spoke to  
7 the Superintendent about and made a decision?

8 A. When I told the Superintendent that they  
9 wanted to photograph the helicopter, that was one  
10 of the things he mentioned. Hey, you know if  
11 possible, have them avoid the tail number, and my  
12 understanding, I know the photographer, Skip  
13 Dickstein. When we told him that, he photographed  
14 it in such a way that that was kind of hidden.  
15 So, it was blocked by the tail rotor a little bit  
16 so it is doesn't look like it was obviously taken  
17 out to bring attention to it. It's not that major  
18 of a deal. But if there's something that  
19 incidentally could help from a security  
20 standpoint, without looking, we are not trying to  
21 say no to everything because everything could  
22 possibly be a security risk. I can't think of  
23 anything else off the top of my head.

24 Q. Would releasing the name of an investigator

1 or State Trooper driving a public official, would  
2 that in your mind pose a security problem?

3 A. No, not necessarily. If they were doing  
4 undercover work, which they wouldn't be if they  
5 were doing this particular detail. Occasionally,  
6 we have concerns of pictures of some of our  
7 investigators who may prospectively be doing  
8 undercover work we try to keep out of photographs  
9 because somebody could identify them that way, no.  
10 We try not to overreact, if you will, to all the  
11 potentials. I mean potentials are limitless and,  
12 obviously, there is a difference in how the last  
13 administration treated information and security in  
14 terms of the perception with security than this  
15 administration. This administration has kind of  
16 toned that down a little bit and allows a little  
17 bit more access than the last administration. Did  
18 that mean that the last administration was  
19 overreactive or overly concerned, not necessarily.  
20 Part of that is a perception that this  
21 administration wants to try to at least appear to  
22 be more open. And I think that's how they have  
23 tried to follow through with, you know, with the  
24 perception of -- including access to records and

1 the quote "transparency" and all of that. So,  
2 there is kind of a change, if you will, that was  
3 trying to be effected from the last administration  
4 to the current administration in terms of the  
5 openness and in terms of let people know what's  
6 going on without looking overly cautious.

7 Q. How was that communicated to you? Was that  
8 memorialized or in any way stated?

9 A. It was stated over and over in the news and  
10 from open meetings and at conferences to on the  
11 Internet, all kinds of things that were being done  
12 differently to try to appear to make government  
13 more accessible.

14 BY MS. TOOHER:

15 Q. If I told you that the Governor's Office  
16 routinely redacts the investigator's name when  
17 they provide the Governor's itineraries or redacts  
18 other information, would that change your  
19 assessment as to whether or not information should  
20 be provided?

21 A. It's not my decision to redact. Again, that  
22 would be the Records people on advice from counsel  
23 whether that should be redacted or not. My  
24 personal feeling is it wouldn't necessarily pose a

1 concern. But, depending on what their rationale  
2 is, I might reconsider that that would be up to  
3 them.

4 BY THE EXECUTIVE DIRECTOR:

5 Q. Sometime back in your testimony you  
6 referenced a conversation that you had with  
7 Superintendent Felton -- and I think I'm quoting.  
8 You said that the discussion was "threat-related  
9 stuff and what I should and shouldn't say."

10 A. Um-hmm.

11 Q. Would you tell us what you said to him and  
12 what he said to you?

13 A. I thought I clarified that.

14 Q. I may have not connected that with this  
15 discussion.

16 A. With regard to -- we had not done a formal  
17 threat assessment. So, what I could say is, for  
18 instance, we have not done a formal threat  
19 assessment. Clarifying that from informal, what  
20 does "informal" mean? Well -- and I didn't state  
21 it that way but intentionally chose the word  
22 formal deletes assessment -- because some sort of  
23 informal evaluation or assessment had been  
24 obviously assessed, if you will, based on prior

1 threats to Senator Bruno, brought to your  
2 attention by his staff that would give us concern  
3 for his safety. And that is essentially what I  
4 recall saying to the media. But when they asked  
5 -- if they asked how many, I wouldn't discuss  
6 that. If they asked what the specific threats  
7 were, one was a failure. Number one, I believe  
8 someone tried to gain access through his office, I  
9 think in Saratoga, a few years ago, so I brought  
10 that one up as an instance because it was from a  
11 public standpoint as an example. But, beyond that  
12 -- and I don't think that was even quoted. But I  
13 used that as an example because I knew it was out  
14 there. Others might have occurred from letters or  
15 incidents that were not public knowledge and I  
16 wouldn't discuss it.

17 Q. You had also mentioned that you wish you had  
18 brought your notes with you.

19 A. Um-hmm.

20 Q. Did you take notes of any of these  
21 conversations?

22 A. No. What I did, I compiled for my testimony  
23 with the Attorney General's Office just reminder  
24 notes with Glenn Valle or counsel to keep me on

1 track of how the story was evolving day to day,  
2 essentially starting from the 28th of June. I  
3 think I have recalled most of that. So, hopefully  
4 it's not a problem or inconsistency there.

5 Q. You still have those notes, I take it?

6 A. I don't know. I was looking for them this  
7 morning, and I couldn't find them; at that time,  
8 that is.

9 Q. Does the State Police have particular  
10 expertise regarding security concerns applicable  
11 to documents?

12 A. Security concerns applicable to documents?

13 Q. Do you understand my question?

14 A. No.

15 Q. Okay. We can agree, can we not, that there  
16 are occasions in which documents are requested  
17 when the contents of those documents would raise  
18 security concerns.

19 A. Sure.

20 Q. And we can agree that from time to time when  
21 those documents are requested and the State Police  
22 are involved in a request, the State Police would  
23 deny the request because of security issues,  
24 security concerns?

1 A. Sure, um-hmm.

2 Q. My question is this. The State Police or  
3 personnel at the State Police have particular  
4 expertise in assessing whether a document contains  
5 information that raises security concerns?

6 A. If an individual were to see a document that  
7 he might have a concern about, a security concern,  
8 I would assume he would bring it to somebody else  
9 before they would release it to somebody if that's  
10 where you're going, in terms of universally, all  
11 troopers are trained in knowing what a security  
12 risk might pose with a particular document, part  
13 of that -- part of that might be common sense or  
14 -- I shouldn't say "common sense" but from  
15 training. And, obviously, if there is something  
16 that gives away -- I'm trying to think of an  
17 obvious -- you know, the number of personnel we  
18 have and where around the Governor at a particular  
19 event, that would be an obvious security risk  
20 maybe to most people, maybe not to most people,  
21 but definitely to our own people. Going to in  
22 general, whether somebody would or not, our people  
23 -- if there was a question it would be brought to  
24 somebody else.

1 Q. Let's take a person who is in charge of  
2 handling FOIL requests, okay, our Records Access  
3 officer. Does the Records Access Officer have  
4 particular expertise in making determinations as  
5 to whether a document that has been requested  
6 contains information that raises security issues  
7 and shouldn't be released?

8 A. Yeah. I mean, again, there is probably a  
9 continuum of what is obvious and what is not. And  
10 when you get into the gray area, if you will, I  
11 would assume she would consult with somebody with  
12 more knowledge, whether it be from our  
13 investigative side -- more likely it would come  
14 from our counsel. But as an absolute yes/no, like  
15 I would assume it would get to the point where  
16 some are obvious -- this is a security issue, I  
17 think this is a security issue, therefore, I would  
18 redact it or not release the document. But coming  
19 to the point of where it may or may not, there is  
20 a question. Bring it to somebody else for  
21 interpretation on that.

22 Q. Is it accurate that the person who is  
23 handling the FOIL request, the frontline person to  
24 make determinations on whether a document raises

1 security concerns?

2 A. I don't know. It's not my area. You would  
3 have to ask the Records people.

4 Q. Who else, other than she, would be doing  
5 that on a FOIL request?

6 A. Our Records Section is huge. There are many  
7 clerks that work in the Records Section.

8 Q. And the Captain would be in charge of all of  
9 them; correct?

10 A. Um-hmm.

11 Q. So, if there were an issue concerning a  
12 possible security concern it would be in terms of  
13 my expression first line, it would go to the  
14 captain?

15 A. I have never worked in the Records Section,  
16 so I can't speak for what their process is.

17 Q. Is there a process at the State Police to  
18 make determinations on when something raises  
19 security concerns, a document raises security  
20 concerns?

21 A. You would have to ask Records. Again, it's  
22 not my area. If there was something that I saw  
23 that was supposedly going to be released and I had  
24 a concern about it, I would raise that concern

1 probably to counsel or to Records. But it  
2 wouldn't initially come through me.

3 BY MS. TOOHER:

4 Q. There came a point after the Times Union  
5 flurry where you received another contact from Mr.  
6 Dicker. Do you remember that?

7 A. Yes.

8 Q. It was on or about July 10th, I believe?

9 A. Approximately. I don't -- yes.

10 Q. What was the nature of that inquiry?

11 A. I don't have -- I can give you an  
12 approximation. I don't have -- I don't recall the  
13 exact details, but he was -- after the direction  
14 that I had given him based on the Superintendent's  
15 request that anything relating to this we  
16 shouldn't answer any further questions. Fred was  
17 making inquiries about -- I believe he didn't say  
18 what he was calling about -- maybe or maybe not,  
19 but I related to him that we wouldn't be able to  
20 comment further about this. And he made a  
21 statement that it wasn't about this. So, at that  
22 point in time he had misquoted me enough times  
23 that I didn't really want to talk to him in  
24 person, so I was doing this by e-mail. And I

1 probably have the documents to memorialize what  
2 the interchange was. He said he wanted to know  
3 how many aircraft we had and what types. I'm sure  
4 he had this information before, so I wasn't sure  
5 where he was going. But I e-mailed him back in  
6 Links to our web site on the type of aircraft we  
7 have information with: Different times, and what  
8 they are used for, et cetera. He then responded  
9 that I was ducking his questions and threatened to  
10 write an article in the New York Post about how  
11 unresponsive I was. I relayed back to him -- and,  
12 again, I may be missing something in this  
13 interchange -- but that I had been responsive to  
14 all of his inquiries and he was asking for  
15 additional flight records, I believe. And, I  
16 pointed out to him that he would have to follow  
17 the FOIL process like all other reporters and I  
18 believe I cited the section of law that points out  
19 what that is because he seemed to question that he  
20 didn't have to do this. He then followed up  
21 stating that he didn't have to do this back in  
22 March. And I pointed out to him that he -- that I  
23 asked him to follow that process if he was going  
24 to get it from us. But because he had gone

1 through the Governor's office, the Governor's  
2 offices had responded to his request, that we did  
3 not. And that effectively ended the conversation  
4 with him on that.

5 (Commission Exhibit 10 was marked for  
6 identification.)

7 Q. I am going to show you what has been marked  
8 as Commission Exhibit 10 and ask you if you can  
9 identify that document.

10 A. Yes.

11 Q. It's a five-page document. The top page is  
12 from Glenn Miner to FUD31@AOL.com, July 11, 2007.

13 A. Yes.

14 Q. Can you identify this document?

15 A. Yes, I can.

16 Q. And what is it?

17 A. That, in sum and substance, is the  
18 interchange that I think that I just related to  
19 you regarding our e-mail exchange of approximately  
20 that date between Fred Dicker and myself.

21 Q. And it appears from the communications that  
22 Mr. Dicker is looking for the flight manifests  
23 from the State Police.

24 A. Yes. He was implying that the New York

1 State Power Authority's plane which at times is  
2 flown by State Police pilots on State Police  
3 missions, that those flights manifest would not --  
4 may not have been included in prior requests. And  
5 I responded that that not everything that we fly  
6 would have been included. And that's kind of  
7 where he was going with this, trying to say we  
8 were hiding something.

9 Q. And you told him he had to file a formal  
10 FOIL request?

11 A. Right.

12 Q. But I thought you testified earlier that  
13 once he had been given these documents by the  
14 chamber and that he had come through you that if  
15 someone called and asked for them you would have  
16 --

17 A. These are different documents. These are  
18 documents -- the original request back in March  
19 was for documents through March 14th, or whenever  
20 the time his request was. This request is for  
21 documents beyond that date. So, whatever the  
22 Governor's office supplied to him, the earlier  
23 date, that would have been what he had, what he  
24 was limited to at the time. So, these documents

1 would have been in addition to those.

2 Q. So if there were additional documents  
3 requested you would not provide them without a  
4 FOIL request; is that correct?

5 A. From our agency, correct.

6 Q. Was there ever any follow-up with Mr. Dicker  
7 on this request?

8 A. No, not to my knowledge.

9 Q. To your knowledge, did you receive a FOIL  
10 request?

11 A. No. And I specifically expected to or --  
12 well, actually, I didn't expect to because he  
13 doesn't do that. But I did direct -- I did let  
14 our Records Section know that he might request it.  
15 And I also had the young man who works in our  
16 office check our general e-mail box to see if  
17 there was a request from him. And he never  
18 followed up on this.

19 Q. Did you reach out to anyone from the  
20 Governor's Office about this request?

21 A. I don't recall. I mean there's a good  
22 chance I might have let either Paul or Bill Howard  
23 -- Paul Larabee or Bill Howard know that he did  
24 this, but I don't recall.

1 Q. Do you recall sending an e-mail similar to  
2 the one you sent with the earlier request?

3 A. I'm sorry?

4 Q. Do you recall sending an e-mail similar to  
5 the one you sent with the earlier request from Mr.  
6 Dicker?

7 A. Oh, to Paul?

8 Q. To paul Larabee.

9 A. I don't think I sent anything via e-mail to  
10 them, and I don't recall communicating to them  
11 about it.

12 Q. Is there a reason that you did not? It's  
13 the same type of request.

14 A. Yeah. The only thing -- again, I might  
15 have. I'm just trying to remember specifically.  
16 With the first one I remember because there is an  
17 e-mail there. There's a very good chance I called  
18 Paul or Bill and let them know that Fred was  
19 requesting this. But at this point in time we  
20 were basically on the -- we are not discussing  
21 this anymore. So, there was kind of an  
22 understanding that, you know, this is what he was  
23 going to have to do.

24 Q. When you say "we are not discussing this

1 anymore" --

2       A. This started from Fred's request for  
3 information ostensibly about something other than  
4 this whole ordeal, this whole flight manifest  
5 stuff. And it went right back to it. And based  
6 on the Superintendent's request of July 9th we  
7 weren't going to answer any questions relating to  
8 this anymore, and that's what I e-mailed to Bill  
9 Howard. So, the understanding was that we weren't  
10 discussing this anymore. The only thing -- I am  
11 trying to -- in all likelihood, I probably called  
12 one or the other, either Bill Howard or Paul  
13 Larabee and let them know -- this is what I told  
14 Fred, but that would have been the extent of it.

15       Q. And you don't have any direct recollection  
16 of that?

17       A. No, I don't.

18       Q. Did you speak with anyone about your  
19 testimony today before coming in?

20       A. No.

21       Q. And you indicated that you had spoken with  
22 Glenn Valle before your testimony with A.G --

23       A. Yes.

24       Q. -- and also with the Inspector General?

1 A. Correct.

2 Q. And did you have any discussions with him  
3 about your testimony here today?

4 A. No, other than times and things like that to  
5 be here, no.

6 MS. TOOHER: Nothing further. You are.  
7 done.

8 INTERVIEWEE: Is there anything I can  
9 add?

10 MS. TOOHER: If you'd like.

11 INTERVIEWEE: Just -- I don't know what  
12 the relevance might necessarily be, but with the  
13 matter of politics mixing and how we have been  
14 used in a political way, I recently recall another  
15 high profile instance where I would consider the  
16 State Police got dragged into something of a  
17 political nature. Back in 2002, if you recall,  
18 former comptroller Carl McCall was running for  
19 Governor, if I have the year correctly -- against  
20 Governor Pataki, the Comptroller's Office had done  
21 an audit of the State Police records or books, if  
22 you will, on the accounting for cellular 911  
23 collections, the surcharge. The money was put  
24 into a large fund; I don't know if it was the

1 general fund, but whatever the fund was. And that  
2 same account was used for other purposes. Now,  
3 the conclusion that was drawn by the Comptroller's  
4 Office in my belief to embarrass the current  
5 administration, stated that the money that was  
6 collected for the cellular surcharges was used to  
7 pay for uniforms, mow lawns at State Police  
8 station, on and on and on. Well, that general  
9 account was, in fact, used for those things but  
10 the money, if you want to call it, is comingled  
11 and was still in the same account because that was  
12 the only choice that the State Police had at the  
13 time. So, that was publicized widely and the  
14 State Police came under immediate scrutiny because  
15 of this and we got dragged into this from a  
16 political standpoint because of the upcoming  
17 election. Now, we were put in a difficult  
18 position to defend ourselves. And, then, Governor  
19 Pataki's press office directed me -- and I believe  
20 rightfully so, to point out to the media in  
21 response that this was politically motivated; that  
22 the Comptroller's Office was doing this in a  
23 political standpoint to try to discredit the  
24 current administration at the time for political

1 purposes. It was a very uncomfortable situation  
2 because I personally had to go on the record  
3 stating that this was -- appeared to be political  
4 in nature. But it also made the most sense  
5 because we were defending our agency which was  
6 being dragged into this because we were under that  
7 current administration at the time.

8 I just wanted to point that out because  
9 I know at other times others have said we never  
10 get pulled into things of a political nature.

11 BY MS. TOOHER:

12 Q. So, that is another tale of how you guys  
13 have gotten politicized in the past?

14 A. It's one example that was kind of high  
15 profile. I realize it doesn't necessarily equate  
16 equally to the situation that we are alleged to be  
17 involved in at this point. But because of who we  
18 work for, because our agency comes under the  
19 Executive Department, somebody is going to allege  
20 that there is political use of us merely because  
21 there are two parties, two major parties in the  
22 state right now. And, whoever has control of us,  
23 if you will, the other party may assert that we  
24 are being used politically. Sometimes this is not

1 -- the fact that we are just involved in something  
2 doesn't mean it's for a political purpose.

3 Q. At what point do you think this became  
4 politically motivated?

5 A. The whole Bruno situation is politically  
6 motivated.

7 Q. That there were allegations --

8 A. It appeared to be more political after it  
9 came out, after the Senator tried to point out  
10 that he was supposedly being spied upon and where  
11 Fred Dicker was able to run with that information.  
12 I mean that whole idea is ludicrous. And that's  
13 coming out slowly and, hopefully, for sure in the  
14 long run. But it's ironic that there is more  
15 politics involved in the investigation -- I'm not  
16 pointing to you -- in hindsight looking at it,  
17 than there was initially supposedly involved in  
18 the whole incident to begin with.

19 Q. Did you feel there were politics involved at  
20 the time?

21 A. No, I had no knowledge. And it may be  
22 unfair for me to answer -- I had no knowledge of  
23 what was going on until after the story initially  
24 came out. So, you know, to look into legitimate

1 and illegitimate use of state resources, that's  
2 one thing. Whether that is political, that is  
3 probably more subject to opinion than maybe can be  
4 analyzed objectively.

5 MR. TOOHER: You are done. Thank you  
6 very much.

7 (The interview was concluded at 12:45  
8 p.m.)

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

3

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

11

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

16

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

22

23 IN WITNESS WHEREOF, I have hereunto set my  
24 hand.

25

26

27

28 BETH S. GOLDMAN  
29 Certified Shorthand Reporter  
30 Registered Professional Reporter  
31 Notary Public

32

33

34

35