

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

=====
Commission Meeting of January 26, 2021
=====

Appearances: Michael K. Rozen, Chair

Commissioners:

Robert Cohen
James E. Dering
Colleen C. DiPirro
William P. Fisher
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
George H. Weissman
James A. Yates

Staff:

Monica J. Stamm, General Counsel
Martin L. Levine, Deputy General Counsel
Walter J. McClure, Director of Communications and Public
Information Officer
Keith St. John, Deputy Counsel and Director of Ethics
Carol Quinn, Deputy Director of Lobbying
Stephen J. Boland, Director of Administration
Michael Sande, Deputy Director of Ethics
Megan Mutolo, Associate Counsel
Lori A. Donadio, Principal Investigative Analyst
Kelly McCready, Confidential Clerk

IT Staff - Tanya Smith
OGS Media Services - Amaury Corniel

1 Walter McClure: Alright, chair. We're live.

2 Chair Rozen: Thank you, good morning everyone.
3 Welcome to the January 2021 edition of the Joint Commission on
4 Public Ethics. Thanks everyone for joining us today. As with
5 all JCOPE meetings held during the pandemic, we are once again
6 using video conferencing technology. The public session is
7 accessible on JCOPE's website to watch via live stream. As a
8 reminder, it's important that only one person speak at a time.
9 In addition, I ask that when you speak, you identify yourself
10 so that we have a clear record. We will take votes by a modified
11 roll call, as we've done in the past, to ensure that everyone
12 is counted. Please remember to mute your phone when you are
13 not planning to speak. Behind attachment A, we have the
14 minutes from the last public session in December of 2020. Any
15 comments or questions?

16 Monica Stamm: Chair, this is Monica. I have an edit.

17 Chair Rozen: Go ahead.

18 Monica Stamm: Okay, so on page four, the fourth
19 paragraph that begins Commissioner Weissman. I don't know about
20 everybody else, but I hear a lot of feedback, so anyone who's
21 not speaking please mute your phone. The paragraph that begins
22 Commissioner Weissman, Commissioner Weissman would like to
23 add, stated that the 1st amendment argument was a red herring,
24 comma, and then continue suggested that staff review.

1 Chair Rozen: Okay, anybody have an issue with that?

2 I mean, that's fine with me. Any other questions or comments?

3 Commissioner Weissman: Mr. Chair, with that change

4 I'd like to make a motion to adopt the minutes.

5 Chair Rozen: Thank you, Commissioner. Is there a
6 second?

7 Commissioner DiPirro: Commissioner DiPirro seconds.

8 Chair Rozen: Thank you, Commissioner. Martin?

9 Martin Levine: Yes, on the minutes, all in favor
10 please raise your hand. Let see, 1, 2, 3, 4. I see Commissioners
11 Yates, Fisher, Weissman and Rozen. I'll call the remaining
12 role. I'm sorry, Commissioner Dering, I didn't, you came in
13 and out. Did you vote in favor? I'll keep going, Commissioner
14 Dering? We are having issues there. Commissioner DiPirro?

15 Commissioner DiPirro: Yes.

16 Martin Levine: Commissioner Jacob?

17 Commissioner Jacob: Yes.

18 Martin Levine: Commissioner McNamara?

19 Commissioner McNamara: Yes.

20 Martin Levine: Commissioner Cohen?

21 Commissioner Cohen: Yes.

22 Martin Levine: Commissioner Lavine?

1 Commissioner Lavine: Yes.

2 Martin Levine: Judge McCarthy?

3 Commissioner McCarthy: Yes.

4 Martin Levine: Commissioner Jacob. Oh, I already got
5 you, I apologize. And I'll go back Commissioner Dering, try
6 one more time.

7 Monica Stamm: Martin, I saw him raise his hand in
8 favor before.

9 Martin Levine: Okay, great. So that's 1,2,3,4,5,6,7,
10 8, 9, 10 all right. Motion carries.

11 Chair Rozen: Great. Thank you. Item three, report
12 from staff.

13 Monica Stamm: This is going to be Steve Boland,
14 Director for Administration. He'll start the third quarter
15 financial report.

16 Steve Boland: Thank you. Good morning everyone.
17 Cash disbursed during the third quarter was \$1,900,000, I'm
18 sorry \$1,096,000 dollars, for a year to date total of
19 \$3,622,000. For personal service, the percentage dispersed
20 was about 70%, and for nonpersonal service approximately 44%,
21 for a total of 66%. That shows our financial acumen in terms
22 of reducing, trying to reduce costs throughout the year. Does
23 anyone have any questions? Thank you.

1 Chair Rozen: Thank you.

2 Monica Stamm: Before we turn, sure, before we turn
3 to the operations report, Martin, you're going to report on
4 just the proposed budget.

5 Martin Levine: Yeah, the Department of Budget, excuse
6 me, Division of the Budget released the proposed
7 appropriations for fiscal year 21-22. Our budget has remained
8 flat, relatively flat, with a nominal increase of \$12,000,
9 which reflects a rent increase in our Buffalo office. We do
10 still expect DOB to request a 5% reduction across use of cash.
11 This would equate to about \$280,000 for the agency. We've been
12 planning for this and believe we can live within those
13 confines.

14 Chair Rozen: Any questions or comments?

15 Commissioner Weissman: Chair, quick one. Hey,
16 Martin, are we already under a 5% cap in appropriations versus
17 cash? Is this?

18 Martin Levine: Yeah, there's been a current year
19 spending plan that was requested by Division of the Budget,
20 which we have incorporated into the current year spending, and
21 then carrying it through the next year as well.

22 Commissioner Weissman: So, so this is not five plus
23 five, this is just the current five?

1 Martin Levine: Yeah, the current five that we've
2 been living within.

3 Commissioner Weissman: Okay. Thank you.

4 Commissioner DiPirro: I guess one question, this is
5 Commissioner DiPirro, Monica had mentioned a prior meeting
6 that we were, we requested an additional investigator. Does
7 this budget include financial wherewithal for the additional
8 investigator?

9 Martin Levine: The yes, yes, that, that position is
10 incorporated into this figure.

11 Commissioner DiPirro: Thank you.

12 Monica Stamm: All right, if there are no further
13 questions, I'll continue, Chair, with the operations update.

14 Chair Rozen: Yes, thank you.

15 Monica Stamm: Okay, so arising out of the work of the
16 confidentiality and records access committee, staff prepared,
17 has prepared, a new monthly operations report, which has been
18 distributed to Commissioners and should be posted and attached
19 to the meeting agenda on the website. It provides the public
20 with information about the Commission's activities, so at each
21 meeting, this is something we intend to do, and this would be
22 provided at each meeting, rather than waiting until the annual
23 report to compile all of this data. The first report covers

1 the month of December 2020, and some calendar year totals for
2 the year 2020. It includes data about investigations,
3 lobbying, and ethics, as well as other units. For example,
4 it includes the number of 15-day letters that we would have
5 sent in December. As you can see in the report, we did not
6 send any in December, but that is what we would anticipate
7 reporting each month, as well as open investigations and
8 pending matters at the end of the month. It also includes data
9 on the lobbyists and clients in the system, the requests for
10 guidance that staff has handled, FDS compliance efforts,
11 audit, and training. The new report is just one among many
12 ongoing efforts of the Commission and the committee to
13 increase transparency about JCOPE, so that the public has a
14 better idea of the important work that we're doing on a daily
15 basis. The changes to the records access regulations, which
16 will be presented later in the meeting, are another initiative
17 of the committee. The committee is continuing to discuss
18 additional ways to be more open within the constraints of our
19 law and plans to meet again on February 10th. So, if anyone
20 has any questions about the report, Commissioners, you should
21 have received the latest version last night, and for the
22 public, it is available on our website.

23 Commissioner Fisher: I don't have any questions, but
24 I'd like to take the opportunity to commend staff. I was one
25 of many Commissioners that was interested in seeing

1 information like this come out on a more regular basis and I
2 think you've done a tremendous job with it and really would
3 like to thank you for the excellent work.

4 Chair Rozen: Thank you.

5 Monica Stamm: You're welcome.

6 Chair Rozen: Alright. Let's, let's move on.

7 Monica Stamm: The New York City office update just
8 to let everyone know, the New York City office is temporarily
9 relocating to the 28th floor, which has a different entrance.
10 So if you ever need to come to the New York City office, you
11 would enter it from 60 Broad Street. The move is tentatively
12 scheduled for the end of February, beginning of March. We're
13 waiting for a firm date. As previously mentioned, the space
14 will have a secure area for our confidential records and it
15 should have a conference room that we can use for investigative
16 purposes and meetings. The work on our new space, the ultimate
17 space that we'll move to on the 5th floor, for 25 Beaver is
18 scheduled to be complete in the fall, but I don't know if
19 they're on target. So this will be our space until the 5th
20 floor is ready.

21 Commissioner Rozen: Great, thank you. Alright. Let's
22 move on item four, behind attachment B, the proposed amended
23 comprehensive lobbying regulations.

1 Martin Levine: I'll take that, Mr. Chairman, As you
2 mentioned, the regulations for lobbying are behind tab B as in
3 boy, and source of funding is tab C as in cat. Just a reminder,
4 this process is to adopt the first set of revisions to the
5 lobbying regulations that were adopted or promulgated in 2018,
6 as well as amendments to source of funding in '18 as well. The
7 revisions that you're voting on today were adopted at the
8 December meeting on an emergency basis and they have been in
9 effect since their submission to the state register. We are
10 requesting today a vote on a permanent adoption. We did not
11 receive any public comments after the last publication of the
12 regulations. We did have some engagement recently with
13 stakeholders, but based on the concerns they raise, we don't
14 see the need for substantive revisions and we'll work with
15 them to address their individual concerns. If these are adopted
16 today, they'll be effective upon publication, which I believe
17 would be February 9th. And unless there's any objection from
18 a Commissioner, I believe we can handle this in a single motion
19 on lobbying and source of funding. I'm happy to address any
20 questions or bring in Carol Quinn, if need be. Commissioner
21 Weisman has his hand up.

22 Commissioner Weissman: I have one question, Martin,
23 regarding a change on page 59 where you struck the terms,
24 including a fiscal sponsor. I assume that was designed to get
25 a third party or other nefarious, I'm going to use the term

1 loosely, money laundering schemes, to get into the system of
2 lobbying. I recognize there is no definition of fiscal sponsor,
3 so I just want to know how staff views that it's going to be
4 able to still enforce the regulations.

5 Martin Levine: There's, there's a couple of
6 provisions in the regulations that would, we believe, already
7 encompass that situation. We thought the additional use of
8 the term, especially without a definition as you point out,
9 would only create confusion without adding any additional
10 teeth. Basically, we have provisions that provide that anyone
11 who pays for a lobbying effort, becomes a beneficial client
12 and is thus disclosed. And there are, there's another one in
13 there. Carol. Can you remind me what the second one is? I
14 apologize.

15 Carol Quinn: Yes, can you hear me?

16 Martin Levine: Yes, we can.

17 Carol Quinn: Okay, I'm sorry, my video's not working,
18 but the other way it really, that the concept of fiscal sponsor
19 is incorporated, is within this, just farther down on page
20 59, within the definition of contribution, which means the
21 provision of funds or resources. So, we think between all of
22 that, the concept of fiscal sponsor is covered. Obviously,
23 there always can be some bad actors, but we think that the
24 regulations are clear enough now, and we, we thought the word,

1 the phrase fiscal sponsor was duplicative, and also might
2 cause some confusion since it's not defined.

3 Commissioner Weissman: Well, as long as staff is
4 comfortable that we've collected all the potential nefarious
5 ways of getting money into this, into the lobbying system,
6 then I'm comfortable, and thank you very much.

7 Martin Levine: We are, thank you.

8 Chair Rozen: Thank you. Other comments, questions?

9 Commissioner Fisher: Chair Rozen, this is Fisher.
10 I'd like to make a motion to approve the modifications to part
11 943 as contained in our meeting packet.

12 Chair Rozen: Thank you. Second?

13 Monica Stamm: Just to clarify, that's a motion to
14 adopt the regulations, to accept the modifications and adopt
15 the regulations, is that correct?

16 Commissioner Fisher: Yes, that's correct. Thank you.
17 Thank you for the clarification and if you could change the
18 motion to reflect that I'd appreciate it.

19 Chair Rozen: Thank you, and Commissioner Weissman
20 seconds. Thank you. Martin.

21 Martin Levine: I just want to find out, Commissioner
22 Fisher, did you, would you like to include the source of

1 funding regulations or what should you handle that separately?
2 It's completely up to you all.

3 Commissioner Fisher: Well, let's simplify it and
4 include it unless someone objects.

5 Chair Rozen: Good, Commissioner Weissman, does your
6 second still stand?

7 Commissioner Weissman: Absolutely.

8 Chair Rozen: Wonderful, thank you. Martin?

9 Martin Levine: On the adoption, permanent adoption
10 of the revisions to part 943 and part 938 of title 19, all in
11 favor, please raise your hands. I see Commissioners Rozen,
12 Fisher, Weissman, Dering. Am I missing anyone on video? No,
13 okay. I'll call the roll. Commissioner DiPirro? I'll come
14 back. Commissioner McNamara, come back. Chair Rozen,
15 Commissioner Weissman, Judge Yates?

16 Commissioner Yates: Yes.

17 Martin Levine: Okay, Commissioner Cohen?

18 Commissioner Cohen: Yes.

19 Martin Levine: Commissioner Lavine.

20 Commissioner Lavine: Yes.

21 Martin Levine: Judge McCarthy?

22 Commissioner McCarthy: Yes.

1 Martin Levine: Commissioner Jacob?

2 Commissioner Jacob: Yes.

3 Martin Levine: And Commissioner McNamara, once again.

4 Okay, that's sufficient votes. The motion carries.

5 Commissioner DiPirro: Commissioner DiPirro also
6 favors.

7 Martin Levine: Thank you.

8 Chair Rozen: Thank you, Commissioner. Okay.

9 Martin Levine: Okay, let's, next set is, sorry switch
10 gears here. This is the, behind tab D as in David, you have
11 the proposed amended records access regulations. These are
12 something that we discussed at the last meeting and arise out
13 of a proposal from the confidentiality and records access
14 committee, designed to provide additional information where it
15 is permissible under the statute. Our current regs on records
16 access, or publicly available documents, mimics part, excuse
17 me, section 94(19) of the Executive Law, and that provides
18 that the financial disclosure statement itself is a public
19 document. What these regulations would do is provide auxiliary
20 information about a financial disclosure statement. It deals
21 generally with information that is available regarding a
22 specific FDS filing or filer. And it also would include title
23 and salary information for JCOPE staff. As I mentioned, this

1 was presented at the last meeting. The only substantive change
2 is on page two, sub paragraph one, B as in boy, and the proposal
3 would provide that when a filing is released to the public it
4 would indicate whether information has been deleted or
5 redacted, as the term may be used. Previously, we would have
6 also included whether something was exempt, but we recognize
7 there were conflicts with other regulations as well as, the
8 notion that something that's been exempted from reporting is
9 not actually part of the filing and thus, we wouldn't be
10 changing anything when releasing it. So, again, this comes out
11 of the records access committee, and if the Commission wishes
12 to move forward, the next step would be a vote to commence a
13 rulemaking.

14 Commissioner Jacob: Question?

15 Chair Rozen: Yes, go ahead.

16 Commissioner Jacob: Since this scope and purpose, if
17 you have 937.1 contains their exemptions, would it be
18 appropriate to include the exemptions that arise under the
19 governor's order to exempt, pursuant to legislative authority,
20 I forget the section number of the governor's. We'll have to
21 go back to the, I apologize, it's 236 is it, point one and
22 two?

23 Martin Levine: I just want to clarify because I'm
24 having...

1 Commissioner Jacob: The corona, the corona exemptions
2 for filing FDS's and the like.

3 Martin Levine: Oh, the executive orders under 202.6
4 and 7, right?

5 Commissioner Jacob: That's what I was that's
6 reaching for, 202.6 and 7 provide exemptions for filers and
7 filings of all sorts, and you have various exemptions in here
8 now. We don't have those items, and we ought to say we don't
9 have them, and that's what the other exemptions basically did.
10 So, would it would it be appropriate to include 202.6 and 7 in
11 the appropriate places in this proposed, in this proposal?

12 Martin Levine: Well, Commissioner, I think it's
13 worth parsing out your statement, and I'm, I'm not trying to
14 quibble with it, but the executive order, as we've discussed
15 in the past, exempts certain people from the definition of
16 public officer. So, it's not exact, it's not the same as saying
17 that they don't have to file an FDS. It's saying that in this
18 capacity, they are not state officers. And so, there's really
19 been no exemption awarded by the Commission, which is what we
20 are using as the basis for our disclosure of an exemption. They
21 simply don't come to us as public officers under the law. But
22 beyond that, I, you know, that that's how far the Commission
23 wants to go as a policy question. I just wanted to clarify from
24 a legal standpoint.

1 Commissioner Jacob: Okay, but you have exemptions
2 here under 94(9), and those are not Commission's exemptions
3 necessarily, they're legislative, but, but this isn't exactly
4 legislative exemption because it authorized for that.

5 Martin Levine: Again, what the Executive Law
6 provides in section 94 is a process whereby the Commission
7 decides whether to award an exemption to someone who is
8 otherwise subject to the provisions of section 73-a. The
9 individuals you are referring to under the executive order
10 would not be subject to that because they are not subject to
11 the Public Officers Law from the very beginning, so, we would
12 not be any part of that process. What we do under 94(9)(h),
13 (i), and (i-1) is review an application for exemption as we
14 are empowered under the law, and then decide whether or not to
15 award it. These regulations would articulate whether or not
16 we have in fact, taken such a step. Again, what you're
17 referring to is someone that would not come to us and thus we
18 would have no role in that.

19 Commissioner Jacob: Well, this is all aimed at
20 transparency. These are all aimed at transparencies. I assume
21 somewhere in our rules or regs are or, or we have to, we should
22 have something about these, these filings that aren't being
23 made, that we don't have them, they're exempt, and why, but
24 this is an opportunity, and if it's your view, it shouldn't be
25 here. I'll defer to you. I, I think it should.

1 Monica Stamm: Chair, if I may speak, this is Monica.
2 Commissioner, I appreciate your point about being clear that
3 we don't have those records and there may be an appropriate
4 place you know, to do that, but these regulations are about
5 governing our records, and of our records, what is going to be
6 made publicly available and the process for doing so. So that
7 is the purpose of these regulations. We could talk, you know,
8 separately, about a place to make that point that there may be
9 other exemptions that have been granted that, so we don't have
10 records. Another example of that would be client
11 determinations that may be made by OCA, the court
12 administration. We don't know if client exemptions were
13 granted. So that's another example where we don't have that
14 information, but the purpose of these regulations is to govern
15 disclosure of records that we do have and to clarify what is
16 going to be publicly available and how it's going to be
17 publicly available and the procedure for challenging that. So,
18 that would be something for the Commission to consider. I'm
19 not sure that addressing records that we don't have fits into
20 these regs.

21 Commissioner Lavine: Mr. Chairman.

22 Chair Rozen: Yes, Commissioner, go ahead.

23 Commissioner Lavine: I have a number of questions for
24 our able staff, but first I want to follow up on Commissioner

1 Jacob's observations. As I understand it, there are a group of
2 volunteers who presumably are within the ambit of the
3 governor's executive order, who are otherwise within the ambit
4 of our jurisdiction because they're serving in other posts.
5 For example, I'll just use an illustrative exemplar, someone
6 serving on the board of the Metropolitan Transportation
7 Authority who then is involved in the rollout of new vaccines.
8 Would this individual be partially exempt under the Governor's
9 executive order, or completely exempt, even though the person
10 is simultaneously serving on the MTA?

11 Monica Stamm: So, Commissioner, as we've discussed
12 before, the scope of the executive order is really not a
13 question for us, but there's, on its face, there's nothing to
14 suggest that that anyone who's otherwise subject to our laws
15 for their, for non-COVID related duties, is somehow not
16 required to comply with Public Officers Law or submit a
17 financial disclosure statement, or any other obligations they
18 have in their state capacity. It's, the executive order, on
19 its face, only applies to COVID-related activities. I don't,
20 I can't answer any hypotheticals. We would need all the facts
21 and we could address those when we have something where we
22 have a question before us that's based on an actual situation,
23 but I also just want to be clear (inaudible).

24 Commissioner Lavine: Well, there is an actual
25 situation. There is a, if I may interrupt.

1 Monica Stamm: Sorry, go ahead.

2 Commissioner Lavine: If I may interrupt, there is
3 an actual situation. I just cited it to you. There's a member
4 of the MTA board who is subject to our jurisdiction, who is
5 also involved in the rollout of the vaccine. Now my question
6 to you is, does the executive order entirely exempt this
7 individual from our jurisdiction?

8 Monica Stamm: And I believe I've answered your
9 question in general terms as to how I understand the executive
10 order operates, but as you know we are not going to discuss
11 any one individual specific situation during the public
12 session, and as counsel I am not going to advise the Commission
13 on legal interpretation of facts and application of that law
14 to specific individuals during the public session.

15 Commissioner Lavine: Yes, I respect your position.
16 On the follow up, however, have you actually discussed this
17 issue with anyone in authority in the executive chamber?

18 Monica Stamm: Have I discussed the issue of whether
19 or not somehow the executive order exempts other state officers
20 and employees from being subject to the Public Officers Law,
21 in their regular state duties? Is that your question?

22 Commissioner Lavine: Yes.

23 Monica Stamm: I have not had that discussion,
24 because as I've said, there was nothing on the face of the

1 executive order to make me think that that is the case. It is
2 on its face limited to COVID-related duties. If you want me to
3 have that conversation, I am happy to have that.

4 Commissioner Lavine: If I may plow some old ground,
5 Mr. Chairman, has there been any discussion with the executive
6 chamber by our staff with respect to the executive order?

7 Monica Stamm: Not recently. When it was first
8 enacted, when it was first issued, I believe we did have some
9 discussions, in context of very specific questions that came
10 in relating to specific individuals.

11 Commissioner Lavine: And with whom, and with whom
12 was this this discourse conducted?

13 Monica Stamm: It would have been lawyers in counsel's
14 office.

15 Commissioner Lavine: Who are the lawyers?

16 Monica Stamm: I don't specifically remember who I
17 had the discussions with, but really, for the most part, my
18 communications are with two, my communications generally are
19 with two lawyers in counsel's office, Judy Mogul and Julia
20 Kupiec. Occasionally, I speak with other lawyers or other
21 lawyers may join them, but for the most part those are the two
22 individuals I speak to in the chamber.

1 Commissioner Lavine: Well, Ms. Mogul is special
2 counsel to the governor, correct?

3 Monica Stamm: I don't actually know her title.

4 Commissioner Lavine: But does she, so far as you're
5 aware, within the ambit of her responsibility, is the panoply
6 of ethics issues or does somebody else handle it in the
7 executive chamber?

8 Monica Stamm: You know, I don't know, any everyone
9 that they've assigned to ethics issues, so I can't really
10 answer that question. But my understanding is both of the
11 individuals that I named deal with ethics issues. Other staff
12 may have contact with other lawyers from time to time because,
13 like I said, there's been other lawyers who have handled ethics
14 issues but these are the two that I deal with on ethics issues.

15 Commissioner Lavine: Yes, and I want to be very
16 meticulous about not mischaracterizing, or misstating, your
17 conclusion, but in my words, and then you can, you can correct
18 me, of course, so far is our staff analyze the legal situation,
19 someone who's in a dual role serving on a state board and also
20 volunteering in response to corona, is not exempt by the
21 executive order with respect to the ambit of their involvement
22 in the state board, is that a fair summation?

23 Commissioner Dering: Could I make a suggestion?

24 Monica Stamm: Sorry, sorry go ahead, Commissioner.

1 Commissioner Dering: And with, with all due respect
2 you know, we've been, I think this line of questioning or
3 discussion, is so far off the proposed regulation, and we've
4 been through this executive order issue a number of times,
5 just in terms of our time, and what we have in our agenda, I
6 wonder if, if this discussion, if it's going to happen again,
7 if it could just happen offline.

8 Commissioner Lavine: Thank you very much,
9 Commissioner Dering. Nonetheless, I'd like an answer to the
10 question I just posed. Does the summation that I articulated
11 your view?

12 Monica Stamm: Yes, you've articulated my view, but
13 to the extent that you want me to confirm that that is how the
14 chamber reads it in a general way, I could certainly convey
15 that question.

16 Commissioner Lavine: Thank you, Mr. Chairman. May I
17 follow up?

18 Chair Rozen: Yep, Gary, but let's, let's keep this
19 brief, okay?

20 Commissioner Lavine: Well, I'll keep it brief
21 consistent with what I believe is my responsibility of due
22 diligence before I vote on this proposal.

23 Chair Rozen: Absolutely.

1 Commissioner Lavine: Quick to, let me put the
2 question to staff. Are informal or formal opinions of the
3 Commission or Commission staff within the ambit of this
4 proposal?

5 Monica Stamm: No, they are not. The records access
6 regulations do not cover disclosure of informal or formal
7 opinions.

8 Commissioner Lavine: Why not?

9 Monica Stamm: Because this is about the record
10 access process by which members of the public request records
11 that are publicly available, and informals and formals are not
12 subject to that process. The Commission, as we discussed at
13 length over the last several meetings, makes determinations
14 about publicizing formal opinions and they're posted on our
15 website. And as you know, the subject of how the Commission
16 wants to treat informals is a matter that's being taken up by
17 the confidentiality committee and we'll continue that
18 discussion on the February 20th, 10th meeting. But certainly,
19 it wouldn't be dictated by this process whereby Walt is turning
20 them over. If an informal were decided by the Commission to
21 be able to be made public, that would be done by a vote of the
22 Commission and not through the records access process. This is
23 a process just for being able to request publicly available

1 records. It is not for something that is done separately at
2 the discretion of the Commission.

3 Commissioner Lavine: With respect to formal opinions
4 and the formal opinion by definition is one that is in writing
5 and adopted by the Commission. Correct?

6 Monica Stamm: Yes.

7 Commissioner Lavine: Are they accessible to the
8 public other than on our website. In other words, if somebody
9 called up and said, I want a copy of any informal opinion on
10 this particular subject, what would the response be from staff?

11 Monica Stamm: I mean Walt you can answer, but I assume
12 that Walt would just send them the link.

13 Walter McClure: Correct. For any formal opinion
14 that's already on the website, I would just point them to where
15 it is on the website. There wouldn't be a need to send a
16 separate document.

17 Commissioner Lavine: Let me now move to the question
18 of the financial disclosure statements, if I may, Mr. Chairman.

19 Chair Rozen: Go ahead.

20 Commissioner Lavine: At the risk of plowing some old
21 ground, let me see if I can get a summary. The current policy
22 is that if an inquiry is made, the filer will not be made
23 aware, and cannot be made aware, even if the filer asks if an

1 inquiry was made, is that correct? This is the current policy
2 I'm addressing.

3 Martin Levine: Yeah, Commissioner, this is Martin.
4 That, that's correct on under current, under the current
5 regulations. Obviously, the drafts would expand that briefly.

6 Commissioner Lavine: Right, and this policy was
7 never adopted by the current Commission. The staff's position
8 is that, if I understand it correctly and again, you'll correct
9 me if I have it wrong, is that it was the policy of a
10 predecessor Commission, and that the current Commission
11 implicitly sanctioned it by adopting the records access policy
12 that is now before us for amendment, is that correct?

13 Martin Levine: No, actually, that is not correct.
14 The records access regulations that have been in effect by
15 this Commission, which were voted on by the members of this
16 Commission when they were initially promulgated in, I think
17 2012 or '13, laid out what was publicly available. And, as I
18 mentioned previously, that tracks with 94(19) of the Executive
19 Law, which provides that the FDS itself is publicly available.
20 As we've discussed today, and before this, this proposal would
21 be to let someone know if someone had requested their FDS, but
22 nothing beyond that.

1 Commissioner Lavine: Yes, very helpful. On the
2 follow up, the current policy, which is what I am addressing
3 at this juncture in the discussion.

4 Martin Levine: The current regulations.

5 Commissioner Lavine: The current policy, however,
6 prohibits a filer from being informed if an inquiry has been
7 made with respect to the filer's FDS. Correct?

8 Martin Levine: The current regulations provide that
9 an FDS is public and nothing else about the FDS.

10 Commissioner Lavine: Right, but the implicit policy
11 that an inquiry will not be divulged to the filer is a hold-
12 over, staff would say, from the predecessor Commission.

13 Martin Levine: No, and I don't have (inaudible).

14 Commissioner Lavine: By the current commission.

15 Martin Levine: Gary, I don't know how many ways to
16 keep saying this. We have certain public information. The FDS
17 is public. Nothing else about the FDS is currently public.
18 That was a regulation that was voted on by the 14 members of
19 the Commission in 2012 or '13. I'd have to look up the date.
20 That is that is the regulation. There's no policy to speak of.

21 Commissioner Lavine: Alright. Now with respect to
22 the current policy.

23 Martin Levine: There's no policy.

1 Commissioner Lavine: Right, with respect to the
2 current policy as you've described, if another Commissioner
3 asked if a colleague's FDS was scrutinized, what would the
4 response be to that Commissioner?

5 Martin Levine: I'd have to, I'd have to know what
6 it was about and why they were asking, but I think you have
7 the gist of what's going on here, so the regulations provide
8 that we would disclose to a filer that their FDS had been
9 requested. If you would like the regulations to provide
10 additional information, the Commission should discuss that.
11 But I don't think backing into an answer, as you're trying to
12 do, is the most productive use of all of our time. So, I think
13 the Commission should decide if there should be additional
14 information, and if there is, we can amend the regs, but we
15 have no policy. This isn't a staff determination. This was a
16 vote of the 14 members of the Commission at that time.

17 Commissioner Lavine: Right, but in the hypothetical,
18 if a Commissioner made an inquiry about another Commissioner,
19 the staff would say that is confidential?

20 Martin Levine: I'm not going to answer that. I think
21 the Commission should discuss whether it wants to add
22 additional information to the regulations or not.

23 Commissioner Lavine: On the follow on, similar
24 question. If an inquiry was made about the FDS filed by senior

1 staff, somebody on the staff obviously knows that that inquiry
2 was made, would it be kept secret from the other staff member,
3 or would the staff member be told that the inquiry was made?

4 Martin Levine: Again, I'm not going to answer that
5 hypothetical question.

6 Commissioner Lavine: Thank you, Mr. Chairman. At the
7 appropriate juncture, I hope you'll entertain some amendments
8 to the regs.

9 Chair Rozen: Thank you Commissioner. Okay, so, let's
10 go back to the regs, we need a vote here. Can I have a motion
11 to approve?

12 Commissioner Lavine: When do you want to entertain
13 the amendments, proposed amendments?

14 Chair Rozen: Hang on, Commissioner Weissman. Go
15 ahead.

16 Commissioner Weissman: I just, you know, I'm a little
17 confused. If I understand what Martin said that under the
18 regulations, if a filer, has a filer's information, whoever
19 requested that information can be obtained under these proposed
20 regs. Is that correct? Martin?

21 Martin Levine: The proposed, the proposed regs would
22 allow a filer to know if someone had requested their FDS. That

1 is, that is all they proposed again. Again, this came out of
2 the committee. This was not a staff proposal.

3 Commissioner Weissman: And that would only, that
4 would only go to who requested it, which is anything else
5 beyond who requested it?

6 Martin Levine: No. In fact, it would go only to
7 whether or not it had been requested, a simple binary yes or
8 no.

9 Commissioner Weissman: Is that, now, so, is that
10 different than how the FOIL reg, how FOIL is applied throughout
11 the other agencies in the State of New York subject to FOIL?

12 Martin Levine: It's my understanding that requests
13 for information under FOIL, the request themselves are public
14 as a FOIL log, that's, but you'd have to go agency by agency.

15 Commissioner Weissman: Well, it could either be a
16 FOIL log, or if it comes, if an agency didn't hold the log,
17 but came in as an email, a piece of paper, a carrier pigeon
18 whatever, as long as it falls under the definition of a record,
19 it would be released, but other personal information, other
20 than the name might constitute an unwarranted invasion of
21 personal privacy under FOIL. So, you know, address, phone
22 number, that wouldn't be released, and that would make sense.

23 Martin Levine: Sounds like, you know, so.

1 Commissioner Weissman: So, our regulations only get
2 part of the way there.

3 Martin Levine: If we were subject to FOIL, they would
4 only get part of the way there, correct.

5 Commissioner Weissman: Okay, thank you.

6 Commissioner Yates: Mr. Chair, if I could explain
7 my vote.

8 Chair Rozen: Have you, we haven't taken a vote yet.

9 Commissioner Yates: Okay.

10 Commissioner Lavine: Well, again Mr. Chairman.

11 Commissioner Yates: I could speak on the motion.

12 Chair Rozen: Hang on Gary, Commissioner Lavine,
13 Commissioner Lavine, one second. Commissioner Yates go ahead.

14 Commissioner Yates: Alright. I'm on the subcommittee
15 and, for confidentiality, and I might have been prepared to
16 vote for this, but I'm going to vote against it right now and
17 I'll tell you why. During this public session, two different
18 staff members were asked a question by a Commission member and
19 both of them said they weren't going to answer. Now, it could
20 be that that's either required by law or respecting
21 confidentiality, in which case it should be taken up in an
22 executive session, but when a Commission member asks a question
23 that's pertinent and relevant on a pending motion in a public

1 session and is simply told by staff I'm going to answer that,
2 my vote is no.

3 Chair Rozen: Okay, well, thank you, Commissioner.
4 When we, when we get to the actual vote, then we'll record
5 your, your vote as no to it. Commissioner Lavine.

6 Commissioner Lavine: Yes, I have three amendments,
7 Mr. Chairman.

8 Chair Rozen: Okay.

9 Commissioner Lavine: When you're ready.

10 Chair Rozen: I'm ready.

11 Commissioner Lavine: Amendment number one, all
12 formal and informal opinions rendered by staff or the
13 Commission should be within the ambit of this records access
14 policy. Specifically, with respect to informal opinions, all
15 informal opinions shall be publicly divulged, in redacted form
16 if appropriate, and all informal opinions will state that the
17 informal opinion is not binding on the Commission.

18 Chair Rozen: Commissioner Lavine, thank you, Can I
19 interrupt you for one second?

20 Commissioner Lavine: Of course.

21 Chair Rozen: Is this, is this, are these amendments
22 that you are proposing here effectively, sort of jumping the
23 gun on the confidentiality committee process? I mean, we've,

1 we've had a discussion about this on the subcommittee, and I
2 thought we had agreed that we were continuing those discussions
3 in February with the hope of bringing something to the February
4 Commission meeting. And I'm just wondering whether the
5 amendments that you are, that you just proposed and are about
6 to propose, are somehow jumping the gun on all of that, in
7 which case I would ask you to reconsider that because to the
8 extent the answer is yes, I will tell you that I, I cannot
9 vote in favor of them, even if I might like to ultimately,
10 before the confidentiality committee has finished its work,
11 but maybe I'm misapprehending what it is you're proposing here.

12 Commissioner Lavine: Well, as always, Mr. Chairman,
13 when you speak, I listen, So, I will defer the amendment, which
14 actually has two parts with respect to the informal opinions
15 and the formal opinions, to the discussion of the committee.
16 But if I may now go to the amendment regarding the FDS, as I
17 understand it, there has been final determination in the
18 committee that this reg as proposed is not to be the subject
19 of any further discussion in the committee. If I'm wrong,
20 please tell me.

21 Martin Levine: I think the Committee's free to bring
22 up any subject it wants.

23 Commissioner Lavine: Yeah, that would well, let me
24 propose an amendment, Mr. Chairman, and then you can advise.

1 I propose that, to be consistent with all other agencies that
2 are otherwise subject to FOIL, to be consistent with the New
3 York City Conflict of Interest Board, that this proposal be
4 amended to provide any filer may request if an inquiry has
5 been made and the individual or entity making the inquiry will
6 be divulged to the filer. There is no principled reason why
7 we should be an outlier. Nobody else that I'm aware of does
8 this. Now, if you want to tell me, you want to put that back
9 into the committee, that's fine. I think then you need to pull
10 the whole regulation in abeyance.

11 Chair Rozen: Well, before, before we get to that,
12 Monica, Martin, is that correct? If we put that issue just
13 raised by Commissioner Lavine back to the confidentiality
14 committee, do we have to hold off on the amended reg?

15 Martin Levine: If you were to, I think that.

16 Monica Stamm: Well, I mean, sorry, I think the issue
17 for the Commission is, I mean, the committee has already taken
18 up Commissioner Lavine's second amendment and I don't think
19 there's further discussion on that topic. I think it's
20 ultimately a Commission decision whether it wants to disclose
21 the identity of requestor, individuals who request financial
22 disclosure statements or not. But the first issue that
23 Commissioner Lavine raised is still subject discussion in the
24 committee, and if some Commissioners would like to incorporate

1 that somehow into record access regulations, then we could
2 certainly table this for that discussion. And to the extent
3 Commissioner Yates is concerned that some Commissioners
4 haven't been able to get their questions answered, certainly
5 Commissioners could call up between meetings to get their
6 questions answered. My reasoning for not answering questions
7 was to me, they were delving into legal opinions that should
8 be only handled in an executive session, and if Commissioners
9 want to pursue it further, I'm happy to entertain that in
10 executive session. But I think that it's really up to the
11 Commission. If they want to defer these regulations for further
12 committee and confidential discussion, then that that's up to
13 the Commission.

14 Martin Levine: And Commissioner, Chair Rozen.

15 Chair Rozen: Yeah.

16 Martin Levine: I, I might clarify that all I was
17 trying to enunciate to Commissioner Lavine was that there may
18 be reasons why staff would need to know if a certain FDS was
19 requested, but we don't as a practice inform, Walt doesn't
20 inform us if someone requested our FDS, but I can't tell you
21 what we would do in a particular situation or what we would do
22 with response to a Commissioner who asked for another
23 Commissioner's FDS because there could be business reasons why

1 they need to see it or it could be personal. I don't know the
2 answer to that. And so that was my reticence in speaking.

3 Chair Rozen: Understood. Thank you.

4 Commissioner Lavine: If I may, Mr. Chairman.

5 Chair Rozen: Go ahead.

6 Commissioner Lavine: Elicited articulation from
7 whoever's propounding this regulation. Why is it that the
8 Joint Commission on Public Ethics should be the outlier? No
9 one else withholds this information. Why should we? What is
10 the rationale for this proposal?

11 Monica Stamm: So, I don't necessarily think it's
12 accurate to say that we are an outlier. Our law does not make
13 this information public. FOIL makes it public. We're not
14 subject to FOIL. For the Conflicts of Interest Board, the city
15 charter makes it public. We're not subject to the city charter.
16 They have legal requirements to make it public. For the past,
17 you know, decades of this entity and its predecessors, a
18 decision has been made not to make this information public,
19 not to make public something that isn't covered by the statute
20 itself. I can certainly, I can certainly think of policy
21 reasons for that. Among others is protecting the public's
22 available, ability to request this information without fear of
23 reprisal. The purpose for why the financial disclosure
24 statements are created is very different than how FOIL records

1 are created. Financial disclosure statements are made purely
2 for the purpose of making information public so that people
3 can be confident in their government about potential conflicts
4 of interest. These records are meant to be public, whereas
5 FOIL is allowing the public access to general business records
6 that go under review to consider whether or not they can be
7 made public whenever there's a request to look for whether or
8 not any of the exemptions apply, whether or not there's
9 information that shouldn't be made public for various legal
10 reasons, very, very different policies and operations and how
11 they work. The reason that you could consider not disclosing
12 this information is to protect individual members of the public
13 from fear of reprisal. We don't want you to discourage people
14 for asking for a record they have every right to request. Now,
15 again, I said, I don't think we are an outlier, because as we
16 have advised, we've looked at other states and other
17 municipalities across the country, not extensively, but we've
18 looked at some, and the practice varies, and the laws vary.
19 So we are, we are not the outlier, but we have, this Commission
20 has taken this position to put the interest of the person
21 requesting the financial disclosure statements over the
22 interest of the public servant in the past, and not change
23 what the law required. If the Commission feels that that
24 policy is not the policy that they want to adopt, and they

1 want to change it, the Commission can change that. And again,
2 we can...

3 Commissioner Lavine: Right but the rationale, the
4 rationale of the governor's executive order exempt volunteers
5 is precisely diametrically opposite to the proposition you've
6 just propounded. In any event I want to ask this question.

7 Monica Stamm: This Commission has a different
8 mission, different policy statement. We didn't issue the
9 executive order. The reason for the executive order to me seems
10 clear on its face, but obviously the governor's office can
11 speak for itself. But there was an emergency and they needed
12 fast resources. To me you are talking about apples and oranges.
13 I don't really understand what one has to do with the other.
14 We're talking about disclosing to a public servant who
15 requested their FDS. And I would ask the question, why does
16 the public servant need to know who requested their FDS when
17 the public servant is well aware that when they disclose this
18 information, and they take on their job, their information is
19 going to be publicly available? But again...

20 Commissioner Lavine: Just as it may, just as a
21 general proposition, is it fair to say that the Commission can
22 exercise the prerogative to divulge any information, or any
23 document that it deems appropriate to divulge, unless it is
24 specifically

1 prohibited by the statute, is that a fair statement?

2 Monica Stamm: I think that's correct. And that that
3 is in part what these regulations are intended to do is, with
4 respect to records that have to date, been sort of not public,
5 the Commission, if they move forward with the records access
6 regulations changes, would be making more information publicly
7 available. We've lost, I think we've lost everyone on camera.
8 We're having technical. Okay, it looks like everyone back,
9 technical difficulties. So, yes, I think there is information
10 that the Commission could vote to make publicly available
11 through these regs if it is not deemed confidential under the
12 statute.

13 Commissioner Lavine: Mr. Chairman.

14 Chair Rozen: Yes.

15 Commissioner Lavine: Thank you very much, madam
16 general counsel. Mr. Chairman. What's your pleasure? You want
17 the whole discussion including the vote postponed pending the
18 committee meeting, or I will put forth the amendment today?
19 It's up to you.

20 Chair Rozen: Well, I'm, let me just ask a question
21 here. I don't necessarily see it as an either-or, Commissioner
22 Lavine. I see it, I see a third option, which is that we vote
23 on the regs as drafted today, with the understanding that in
24 the confidentiality committee we can make changes, which we

1 can then implement. So, I don't know why we have to hold up
2 voting on the regs today on things that we can otherwise change
3 if we want to in the future. These have just been policies of
4 the Commission. We can change the policies if we want to.
5 That's one of the things we're debating.

6 Commissioner Lavine: Well, if you're going to vote
7 on the reg today then I put forth my amendment, if you please.

8 Chair Rozen: Go right ahead. I would like us to
9 vote on the regs today so go ahead and put forth your amendment.

10 Commissioner Lavine: I've withdrawn the first
11 amendment, but the second amendment I'm not going to withdraw,
12 and I propose that the reg be amended that if an inquiry is
13 made, the filer can request to know who made the inquiry.

14 Chair Rozen: Okay, so I'm going to assume,
15 Commissioner Lavine, that's a motion to approve the regs with
16 that amendment, right?

17 Commissioner Lavine: Yes.

18 Chair Rozen: Okay. Is there a second for that?

19 Commissioner Weissman: Mr. Chair?

20 Chair Rozen: Yes.

21 Commissioner Weissman: I'm, I'm going to second that
22 because part of again, part of the discussion here regarding
23 fear of reprisal, believe me, in the business context, when

1 competing entities seek information that's come into state
2 agencies, as someone who was involved for many decades between
3 two and three, regarding FOIL matters, the fear of reprisal
4 is considerably much greater in the context of commercial or
5 trade interests, and I just can't understand part of the
6 argument being made by our general counsel, so I have, and
7 it's consistent with everything else in the, in the FOIL world,
8 I understand we're not subject to FOIL by law but we are trying
9 to be transparent, so I'm going to second Commissioner Lavine's
10 motion.

11 Chair Rozen: Thank you Martin?

12 Commissioner Jacob: On the motion, on the motion, Mr.
13 Chairman, on the motion?

14 Chair Rozen: Yeah. Yeah. Go ahead.

15 Commissioner Jacob: General counsel and deputy
16 counsel have said that we are different from FOIL because we
17 are prohibited by law from acceding to these kinds of requests
18 as to who requested. Can you just point to me where in the
19 Executive Law that prohibition is stated?

20 Monica Stamm: Commissioner, I'm sorry. I didn't say
21 we're prohibited. I said that our statute specifies exactly
22 what records are publicly available and it exempts us from
23 FOIL. So FOIL does not apply, and then Commissioner Lavine
24 asked me some more questions and, as I believe I said in

1 response to that, this question is completely in the discretion
2 of the Commission. There is no law that would prevent the
3 Commission from changing these regs to disclose the identity
4 of an individual who requests an FDS. It's, it's just the
5 Commission would have to change the regs. There is no law.

6 Commissioner Jacob: I was only trying to have you
7 point to the statute that either permits you to do it or
8 doesn't permit to you to do it. It would be helpful if I knew,
9 or we knew, what law we're talking about, because the reference
10 to it is made repeatedly.

11 Monica Stamm: 94, Executive Law 94(19) makes clear
12 what records are publicly available.

13 Commissioner Jacob: And where does it make clear that
14 the requested amendment cannot be accommodated?

15 Monica Stamm: It doesn't, as I just said, the law
16 does not prohibit.

17 Commissioner Jacob: What language in section 19,
18 allow me to finish, what language? What specific language in
19 section 19 are you referring to? It's a large section with
20 many sub paragraphs.

21 Monica Stamm: Okay, I am not sure, 94(19) identifies
22 the specific records that are publicly available. And then in
23 2012, this Commission adopted or modified the records access
24 regulations which allow staff to respond to record access

1 requests, and it, the existing regs, only allow staff to
2 produce what is identified in 94(19)(a).

3 Commissioner Jacob: Okay, so you're relying, you're
4 relying on the language in the statute that says the only
5 records of the Commission which shall be available for public
6 inspection. Isn't that language the only records?

7 Monica Stamm: I am relying on that, that law and the
8 regulations that the Commission adopted, which we now follow.
9 The Commission has complete discretion, as we've discussed, to
10 make more records that are not public publicly available as
11 long as they're not confidential, and that's the purpose of
12 these amendments. There are several things that are now in the
13 proposed part 937 that are not included in 19(a) that the
14 committee is recommending now be made publicly available, and
15 if the Commission chooses to add in the identity of someone
16 who requests an FDS, then staff will then be able to make that
17 record publicly available.

18 Commissioner Jacob: Okay.

19 Monica Stamm: There is nothing in the law that
20 prohibits it.

21 Commissioner Yates: Mr. Chair?

22 Chair Rozen: Yes, Commissioner, go ahead.

1 Commissioner Yates: I actually, I don't want to
2 cross talk, but I have a question of the maker of the amended
3 motion, that is, Commissioner Lavine.

4 Chair Rozen: Go ahead.

5 Commissioner Yates: And number one, previously, I
6 said I was going to vote no because I thought that your
7 questions, while relevant and pertinent had gone unanswered,
8 but by your motion I take it you feel satisfied with whatever
9 answers you've been given so that we can go ahead and proceed
10 on this. Is that correct, Gary?

11 Commissioner Lavine: Thank you, your honor. My, my
12 position is that these issues were to some extent, or to a
13 great extent, milled over in the committee meeting.

14 Commissioner Yates: Okay.

15 Commissioner Lavine: A number of these questions
16 were posed and the staff's position has remained the same, and
17 I have no, I have no particular criticism to make of the staff,
18 Judge, but my position is that there are a number of these
19 issues that we've considered in the committee in which the
20 institutional prerogative of the Commission and individual
21 Commissioners is being circumscribed, and I believe as an
22 institutional matter, that's, that simply inappropriate and
23 not in the public interest. Today, as part of the overall

1 discussion about who's in charge here, it should be the
2 Commissioners.

3 Commissioner Yates: Okay, now Gary, Commissioner
4 Lavine, if you don't mind, I have a friendly amendment to your
5 amendment. And that's the following, that and that's the
6 following, the current regs lay out what the statute says
7 should be made available, which is fine. The proposed amended
8 regs delve into the area of things which the Commission has
9 the discretion, because it's non-confidential, to disclose as
10 well. Which is fine, and I don't, I'm sorry I'm getting
11 feedback. I don't have a problem with that in concept, but the
12 one caution that I would make is that section 87 of the Public
13 Officers Law, the, the freedom of information law, also has
14 some exceptions that when an agency is about to disclose a
15 public record, that there can be an application under certain
16 conditions that it not be disclosed. And if you look at 87,
17 it talks about things like an unwarranted invasion of privacy,
18 or interfering with law enforcement investigations, or
19 judicial proceedings, or depriving a person a fair trial, etc.,
20 etc. So, my friendly amendment to your motion would be that
21 if we're going to voluntarily, as an agency, disclose things
22 which are not mandated to be disclosed by 94 but which the
23 discretion to disclose, we should apply the discretionary
24 factors of the FOIL, which means that I would attach to your
25 amendment subdivision 2 of section 87 of the Public Officers

1 Law to say that the Commission, or the staff acting on behalf
2 of the Commission, can deny a request for that information if
3 it's an unwarranted invasion of privacy or any of the other
4 factors that permit exclusion under 87 of the Public Officers
5 Law.

6 Commissioner Lavine: I'm in total accord and my
7 amendment would have been deficient without your addendum.
8 Thank you very much, your honor.

9 Chair Rozen: Anybody else want to be heard on this?

10 Commissioner Weissman: I believe, Mr. Chair, I
11 believe I go with the seconded because that's how I, that's
12 how I envisioned this being applied in the first instance
13 anyway.

14 Commissioner Fisher: This is Fisher. I would like
15 to ask for an opportunity to discuss or debate and I'd like to
16 offer my reason for choosing to vote against this. I believe
17 there's a very real issue around whistle blowers, and I think
18 that almost by definition, this financial information is
19 designed for whistle blowers to perhaps obtain in the course
20 of their whistle blowing, and we have no way as it stands to
21 protect them from retaliation, and if the effect of this
22 amendment, and I think this is the effect as I understand it,
23 is to make the identity of a potential whistle blower known to
24 the person who files the report without us having any way to

1 protect that potential whistle blower, I think there is a
2 potential for damage to that individual that we would not want
3 to see. So, if I understand that correctly, I plan to oppose
4 this amendment on that basis.

5 Chair Rozen: Thank you, Commissioner. Let me just,
6 make clear something here, because there's been a lot of back
7 and forth, so, the staff don't have a position here. The staff
8 are just conveying all of our positions, and so we, as the
9 Commission, have the power to change any of these any time we
10 should determine to do so. So, I am going to also vote against,
11 since we now seem to be voting before we vote, but I'm also
12 going to vote against, not because I'm not open to having a
13 further discussion about this, but rather because I think it
14 is jumping the gun on the subcommittee's work, which I don't
15 think we should be doing at this juncture. So that being said,
16 Martin, we have a seconded motion, so let's take the vote.

17 Commissioner Weissman: Mr. Chair?

18 Chair Rozen: Yes, Commissioner Weissman.

19 Commissioner Weissman: I'm sorry. I'm sorry to
20 extend this, but I do want to respond to Commissioner Fisher's
21 observations. Unfortunately, the cat is already out of the
22 bag. For example, under FOIL, if somebody requests time and
23 attendance, and they're in a whistleblower situation, they can
24 obtain it, and their identity can also be determined if

1 somebody were to FOIL that. So again, I listen to these
2 arguments. I've dealt with FOIL, for, as I said, a number of
3 decades. You know, it, it may be best for staff to provide all
4 the Commissioners with a better understanding of how FOIL works
5 so, everybody at least is legally on the same page before we
6 start voting for reasons that may or may not be grounded in
7 law, but that would be, I guess, where I'm going is maybe we
8 should be tabling this thing till we have a better
9 understanding.

10 Chair Rozen: That I can agree with, Commissioner
11 Weissman.

12 Commissioner Weissman: If you would like that
13 motion, I will make it, if you will second it.

14 Chair Rozen: I will second it, and you know I'm not
15 in generally in the, in the vein of moving or seconding. I'm
16 just calling the roll, but I will second that motion,
17 Commissioner.

18 Commissioner Weissman: Okay. Thank you. Sounds good.

19 Monica Stamm: I don't think we, we don't need a motion
20 to table the amendment. If Commissioner Lavine just withdraws
21 his motion, that should be sufficient.

22 Chair Rozen: Commissioner?

23 Monica Stamm: And then we can then.

1 Commissioner Lavine: Yeah, do I understand correctly
2 what is being proposed is that we vote on the proposal as
3 presented, unamended, and that the, any amendments plural will
4 be held in abeyance, is that what's being proposed?

5 Commissioner Weissman: Commissioner Lavine, this is
6 Commissioner Weissman. My motion is to table this whole thing
7 and have, have staff give the Commissioners who haven't lived
8 in the FOIL world before a better understanding of how it
9 actually works, because we're, because I believe we are all,
10 we all want to get to the same point, which is to become as
11 transparent as we can and hopefully to get this agency to do
12 what FOIL requires other agencies to do. But I'm not sure we
13 understand what FOIL requires other agencies to do.

14 Commissioner Lavine: Right, but is your proposal
15 that we vote on the reg today and hold all amendments in
16 abeyance, or hold the reg in abeyance?

17 Commissioner Weissman: Hold the reg, hold the reg
18 in abeyance, so we all know.

19 Commissioner Lavine: Are you sure, Mr. Chairman,
20 that that was the motion that you thought you were seconding?

21 Chair Rozen: Yes. I'm look, I unless Martin or Monica
22 chimes in here and says that there was some reason why this
23 reg needs to go to a vote for approval today and can't wait
24 until February, then yes, I agree with Commissioner Weissman.

1 Commissioner Lavine: I withdraw my, I withdraw my
2 amendments for today.

3 Martin Levine: There's no reason it has to go
4 forward.

5 Chair Rozen: Okay, so then anybody else want to be
6 heard on this? No?

7 Commissioner Jacob: I would. I would.

8 Chair Rozen: Okay.

9 Commissioner Jacob: Just one sentence or two. Gary
10 has asked many times for the reason why we ought to be a so-
11 called outlier. I'm still trying to figure out if, as Monica
12 has said, the law allows the request of Gary to be put into
13 the regs. I can't figure out why all of the opposition. Why do
14 we need to be different? Why can't the identity of the
15 requestor be a part of this reg? Now I understand that
16 Commissioner Fisher took a stab at that, but that his view of
17 the law may not be right, as Commissioner Weissman points
18 out, which brings us full circle back to the question that
19 started this all, and if we're going to put this off for a
20 while, I would hope someone focuses on giving us all, at least
21 me, an answer. Why must be different? Why can't this
22 information be provided by staff? Thank you.

23 Chair Rozen: Thank you, Commissioner. Alright,
24 anybody else. Okay. I believe this takes us to item five on

1 the agenda. Do we have new another business to discuss? Monica,
2 Martin?

3 Monica Stamm: It's up to the Commissioners if there
4 is anything new.

5 Chair Rozen: Commissioners, anybody have anything
6 they want to raise here? Okay, then I need a motion to enter
7 into executive session, please.

8 Commissioner Dering: I'll move, Dering.

9 Chair Rozen: Thank you. Second.

10 Commissioner Fisher: Fisher seconds.

11 Chair Rozen: Thank you, Commissioner. Martin?

12 Martin Levine: On the motion to executive session,
13 all in favor, please raise your hand. I see Commissioners
14 Rozen, Weissman, McNamara, and Dering, and Yates. Thank you.
15 I'll call the remaining roll. Commissioner DiPirro?

16 Commissioner DiPirro: Yes.

17 Martin Levine: Thank you. Commissioner Cohen?

18 Commissioner Cohen: Yes.

19 Martin Levine: Come back. Commissioner Lavine?

20 Commissioner Lavine: Yes.

21 Martin Levine: I seem to have lost my feed. I'll
22 wait a second.

1 Monica Stamm: Okay, so Martin, I don't know if you
2 heard, but Commissioner Cohen and Commissioner Lavine both
3 said yes. Commissioner McCarthy?

4 Commissioner McCarthy? Yes.

5 Monica Stamm: 1,2,3,4,5,6,7, 8 who are we missing?

6 Walter McClure: Commissioner Jacob.

7 Monica Stamm: Commissioner Jacob?

8 Commissioner Jacob: Yes, yes.

9 Monica Stamm: I have 11, I believe, okay, Martin.

10 Martin Levine: Yeah, sorry, I lost everything. Let
11 me just finish this up. Commissioner Lavine.

12 Monica Stamm: He said yes.

13 Chair Rozen: Martin, we already, Monica completed
14 the vote, 11 yes.

15 Martin Levine: Great. Thank you.

16 Chair Rozen: Motion carries. Okay. We're public
17 session is adjourned.

18 Walter McClure: Please stand by.

19 [The Commission went into Executive Session]

20 [Chair Rozen left the meeting during Executive Session and
21 Commissioner Weissman served as chair for the remainder of the
22 Public Session]

1 [The Commission returned to Public Session]

2 Walter McClure: We're back in public session.

3 Commissioner Weissman: Okay, thank you very much,
4 Walt. I'm going to ask general counsel Monica Stamm to report
5 on our executive session.

6 Monica Stamm: Sure. During executive session, the
7 Commission discussed litigation and personnel matters and
8 authorized steps in several, I'm sorry, approved one settlement
9 agreement, and a modification to an existing settlement
10 agreement. And the commission authorized steps in several
11 investigative matters, closed two matters and discussed other
12 investigative matters.

13 Commissioner Weissman: Thank you very much, Monica.
14 Is there any other business before the Commission?

15 Monica Stamm: Not that I am aware of.

16 Commissioner Weissman: Hearing none, may I have a
17 motion to close the Commission meeting in public session?

18 Commissioner Dering: I'll move, Dering.

19 Commissioner Yates: Second.

20 Commissioner Weissman: Thank you very much, Jim
21 Yates. All in favor, please signify by saying aye, raising
22 your hand.

1 Martin Levine: Commissioner Weissman, Yates, Fisher,
2 McNamara and Dering, Commissioner Cohen?

3 Commissioner Cohen: Yes. Yes.

4 Martin Levine: Commissioner DiPirro?

5 Commissioner DiPirro: Yes.

6 Martin Levine: Commissioner Jacob?

7 Commissioner Jacob: Yes.

8 Martin Levine: Commissioner Lavine?

9 Commissioner Lavine: Yes.

10 Martin Levine: Judge McCarthy?

11 Commissioner McCarthy: Yes.

12 Martin Levine: Motion carries.

13 Commissioner Weissman: Thank you very much, Martin.

14 To all, have a very good afternoon. Take care.

15

16