

NEW YORK STATE  
JOINT COMMISSION ON PUBLIC ETHICS

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Commission Meeting of March 23, 2021

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Appearances: Camille Varlack, Chair

Commissioners:

Richard F. Braun  
Robert Cohen  
James E. Dering  
Colleen C. DiPirro  
William P. Fisher  
Daniel J. Horwitz  
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, Director of Ethics  
Carol Quinn, Deputy Director of Lobbying  
Stephen J. Boland, Director of Administration  
Michael Sande, Deputy Director of Ethics Guidance  
Megan Mutolo, Associate Counsel  
Lori A. Donadio, Principal Investigative Analyst  
Kelly McCready, Confidential Clerk  
Olivia Fleming, Intern

IT Staff - Tanya Smith  
OGS Media Services - Amaury Corniel

1           Walter McClure: Chair, we're live.

2           Chair Varlack: Okay. Great, Thank you. Good morning  
3 everyone. Welcome to the March 2021 meeting of the Joint  
4 Commission on Public Ethics. The meeting is now called to order.  
5 We apologize for our delay in starting because of technological  
6 challenges.       This meeting is being held using video  
7 conferencing technology. The Public Session of this meeting is  
8 accessible on JCOPE's website to watch via live stream. A  
9 couple of important reminders. It is important that only one  
10 person speak at a time. In addition, I ask that when you  
11 speak, please identify yourself so we have a clear record. We  
12 will take votes via a modified roll call to ensure that  
13 everyone is properly counted. And please also remember to mute  
14 your phone when you are not speaking.

15           Walter McClure: Madam Chair, if you could hang on  
16 one second. I do hear somebody has competing audio, so please  
17 make sure you mute that because it's is coming through the  
18 speakers.

19           Martin Levine: Judge McCarthy, that might be your  
20 phone, I'm not sure.

21           Walter McClure: I think we're okay now.

22           Chair Varlack: OK, great. Deputy General Counsel  
23 Levine, do we have a quorum?

1           Martin Levine: Yes, we do ma'am. We have all thirteen  
2 members.

3           Chair Varlack: Thank you, so let's get started. The  
4 second item on the agenda behind attachment A is the approval  
5 of the minutes from the Public Session of the last meeting of  
6 the Commission held on February 23, 2021. Are there any  
7 corrections to the minutes?

8           Martin Levine: Yes, ma'am, there are. There is one  
9 correction on page four, in the first full paragraph in the  
10 very first sentence, a word is missing. It should read several  
11 Commissioners weighed in on the issues. And then there is one  
12 issue to note, it won't result in any change but, on page  
13 seven, the motion at the end of Roman six, Commissioner Fisher  
14 was not recorded. He had, we lost his audio and video feed,  
15 and the same thing occurred in the motion in Roman seven to go  
16 into Executive Session. Commissioner Fisher was not recorded.  
17 While we can't change the minutes to record his vote, he did  
18 ask that today's minutes reflect that he would have voted  
19 against the motion in Roman six and for the motion in Roman  
20 seven. So we will record that today for him.

21           Chair Varlack: Okay, thank you very much. Are there  
22 any other corrections to the minutes from any other  
23 Commissioner? Okay, great. Can I please have a motion to

1 approve the February 2021 minutes of the Commission, as  
2 corrected?

3 Commissioner Dering: So moved, Dering.

4 Martin Levine: I see Weissman.

5 Chair Varlack: Can we have a second?

6 Commissioner Braun: Second.

7 Chair Varlack: All in favor?

8 Martin Levine: Please keep your hands up until I've  
9 called your name. Braun, Fisher, Dering, McNamara, Weissman,  
10 Yates, Varlack. Sorry, Commissioner Cohen on the minutes?

11 Commissioner Cohen: Yes.

12 Martin Levine: Commissioner DiPirro?

13 Commissioner DiPirro: Yes.

14 Martin Levine: Commissioner Horwitz?

15 Commissioner Horwitz: Yes.

16 Martin Levine: Commissioner Jacob?

17 Commissioner Jacob: Yes.

18 Martin Levine: Commissioner Lavine?

19 Commissioner Lavine: Yes.

20 Martin Levine: And Judge McCarthy?

21 Commissioner McNamara: Yes.

1 Martin Levine: Motion Carries.

2 Chair Varlack: Thank you. Let's move on to item  
3 three on the agenda, report from staff. General Counsel Stamm?

4 Monica Stamm: Sure. The monthly operations report  
5 for the month of February attached at tab B. The only thing  
6 of note is again, the numbers of calls and emails coming in  
7 for lobbying assistance is still very high. We're expecting  
8 it to drop off soon as the bimonthly reports were due but we  
9 will see how that goes. We are happy to answer any questions  
10 about the monthly report.

11 Chair Varlack: Thank you. Anyone have any questions  
12 or comments? Okay, great. Moving on to item four, the  
13 delegation of authority to staff. General Counsel Stamm?

14 Monica Stamm: I think this is a matter of Commission  
15 discussion. Commissioners have asked that this matter be placed  
16 on the agenda and there is a proposal that has been circulated,  
17 so I leave it for the Commissioners to have discussion.

18 Commissioner Yates: If I may?

19 Chair Varlack: Yes, thanks Commissioner Yates.

20 Commissioner Yates: Okay, this is a topic that we've,  
21 that's been discussed before, although this motion is different  
22 from anything that has been proposed before or voted upon. The  
23 question comes down to this. The law requires, regulations

1 require, in at least four different places that the Commission  
2 approve certain activity before it be engaged upon by various  
3 officials. In particular, the statewide elected official, the  
4 Governor, the Attorney General, the Lieutenant Governor, the  
5 Comptroller, or a Commission head, or the head of a department  
6 wants to engage in certain activities, the law requires that  
7 they get the approval of the Commission. That includes things  
8 like outside income ventures, outside activity, fees or  
9 payments for services, travel reimbursements when it's paid by  
10 either an interested party, a lobbyist, or not, and honoraria,  
11 and certain activities, and whether or not certain lobbyists  
12 may engage, may retain, someone to act on their behalf in a  
13 contingent manner that is based upon either equity or stock  
14 shares that might be provided which might depend upon the  
15 success of the venture. All of those activities according to  
16 regulations require approval of the Commission. We have had in  
17 place, for a number of years, a resolution which allows the  
18 Commission to delegate certain decisions and activities to the  
19 Executive Director and indirectly to the rest of the staff  
20 though that when the decision is between meetings, when a  
21 decision needs to be made between meetings and it's based on  
22 precedent. I will acknowledge, although I take a strong  
23 position on it, I don't feel like reigniting the debate, there  
24 has been a question which has arisen as to whether or not the  
25 delegation to the Executive Director to make, to issue,

1 informal letter opinions is the equivalent of the Commission  
2 approving outside activity or outside income or honoraria, etc.  
3 by a statewide official. It turns out, Commissioner Fisher  
4 and I had competing resolutions, and I thank Bill for this,  
5 Commissioner Fisher, he has engaged with me in a very, what I  
6 think has been and I hope will be a productive process of  
7 exchanging different forms of the two resolutions. We're now  
8 up to what I call version eight, which is the one that's been  
9 sent to all of you. And what it tries to do is the following,  
10 and that is, it turns out, upon research, that the staff, and  
11 through the Executive Director, through the informal letter  
12 opinion process, has quote, approved, unquote about thirty to  
13 forty decisions a year, are applications made by the Governor  
14 or Commissioners or statewide elected officials in those four  
15 areas. We have had a lot of debate over whether or not those  
16 letter opinions properly constituted approval and whether or  
17 not the approval that was required by the regulations was ever  
18 met. One issue of great concern to a number of our members has  
19 been that we are completely unaware, or have been completely  
20 unaware of almost all, if not all, of those opinions or  
21 decisions that have been made. It is in the normal course, I  
22 am not faulting staff for not making something necessarily  
23 available upon request, but in the normal course, the applicant,  
24 the Governor or the Comptroller, or whomever, the Attorney  
25 General, talks to staff through counsel or directly, gets an

1 opinion, considers it to be an approval and the Commissioners,  
2 myself and other Commissioners, not only weren't aware of the  
3 decision, we didn't even have the underlying materials. We  
4 didn't even know what the application was based upon or what  
5 the question was. And those letter opinions have always been  
6 treated as confidential matters, which is why staff has not  
7 generally distributed them. So without faulting anybody, I am  
8 not trying resurrect history, and say whether anything was  
9 right or wrong in the past, but going forward, I get the strong  
10 sense, and I think, I hope a majority of the Commissioners  
11 agree, that in certain areas when the regulations require  
12 approval by the Commission for those limited number of cases,  
13 the thirty or so each year, thirty five or so each year, where  
14 the Governor or the Comptroller or the Attorney General or  
15 Commission Head asks for approval to engage in some outside  
16 income or activity or venture or travel, that the Commission  
17 be aware of it, and it not be made by dint of an informal  
18 letter opinion in a private conversation with staff, which has  
19 in the past. Now, Bill Fisher and I, and I commend him for  
20 this, was open to the prospect, even though he voted against  
21 my earlier motion which was broader, and he raised a couple of  
22 legitimate concerns which I hope are addressed in version eight.  
23 He said that minor travel expenses, as a routine matter, don't  
24 necessarily require a vote of the Commission. And he asked  
25 that if there is going to be a fee for travel reimbursement or



1 a fee for speaking or performing a service where the money  
2 goes to the state anyway, if the amount that's paid is less  
3 than \$2000, then we delegate that to the staff. We don't need  
4 to approve it as a Commission matter. I am willing to accept  
5 that even though it's a variant of the general proposition  
6 that no approvals can be done by staff, that we can't delegate  
7 that matter, but I think for things that are deminimus, like  
8 a travel reimbursement less than \$2000, I think Commissioner  
9 Fisher raised a good point. I'd also commend him for carving  
10 out an exception to that, and that is, if the travel  
11 reimbursement or fee is offered on behalf of or by an  
12 interested source, somebody who is a lobbyist or a client of  
13 a lobbyist who has a matter of concern pending in front of  
14 that statewide official, that in that case, you would still  
15 require approval of the Commission regardless of the amount,  
16 even if it's one dollar, and I thank him for that amendment.  
17 He also raised another good point and that is, since there was  
18 a question in the past about the scope of delegated authority,  
19 are we really going to go back and try and unwind past decisions.  
20 He recommended that we go forward, but people had the right to  
21 rely upon a good faith application and an approval in the past  
22 and that it's not worth us going back, and I agree with him on  
23 that. We, there was ambiguity in the past, we are trying to  
24 lend clarity with this resolution, and so I agree with him  
25 that the resolution, which lends clarity, is one which should

1 be prospectively applied. There is a third matter and a fourth  
2 and then I'll pass it on to the rest of the committee. The  
3 third matter is what do we do with the informal letter opinions,  
4 what force do they have? The statute says that when there is  
5 a formal application to the full Commission that we may publish  
6 a redacted form of it for the edification of the public and  
7 the covered parties. There is no mention in the statute of  
8 informal letter opinions at all. No reference to it. So, the  
9 question is, will they have force and what do we do with them?  
10 Commissioner Jacob has rightly pointed out that there is a  
11 parallel system in the SEC, which has worked for years when  
12 you have staff opinions. So the decision was made in version  
13 eight to do the following, and that is: if an applicant asks  
14 for approval or an opinion from staff and they present all the  
15 facts, they don't omit anything, they don't misstate anything,  
16 going forward, then as to that particular matter, that party  
17 will have safe harbor and will be able to rely upon that  
18 informal letter opinion. But, if in the view of the Commission  
19 that the staff decision, which was made one, which is not the  
20 Commission's position and the Commission would rather reverse  
21 that as a matter of policy we are free to do so, we still have  
22 the authority to do that, but it would not affect the reliant  
23 party who had depended upon the informal letter opinion, but  
24 it would be a modification going forward, and as with formal  
25 opinions we would have the right, the Commission would have

1 the right, the discretion, to either publish, in a redacted  
2 form, an informal letter opinion, just as we do with formal  
3 opinions, for the edification of the public, or not. We could  
4 maintain confidentiality if we thought it was a matter that  
5 didn't deserve or require publication. And then the last item  
6 is something that Commissioner Jacob's raised, which I think  
7 a number of the Commissioners agree with as well. And that is  
8 that in the past, we didn't really know, the Commission wasn't  
9 really aware of the letter opinions, the facts underlying them,  
10 or even how many were issued or to whom and for what matter.  
11 So that the resolution now carries a provision that there would  
12 be a schedule attached at our monthly meeting so we can be  
13 advised as to, the Commission would be, advised as to who  
14 sought, which statewide official or Commission heads or  
15 Attorney General sought an opinion, an informal letter opinion  
16 or received one, and what was the subject matter. Now this, of  
17 course, will be confidential just as to the informal letter  
18 opinions themselves are confidential but at least the  
19 Commission within the Commission would be able to look at them,  
20 and Commissioners, every Commissioner individually and  
21 collectively, all the Commissioners, would have the right, if  
22 something caught their eye that they thought was worth further  
23 examining, they would have the right to see the submitted  
24 materials which is something new, because other than I think  
25 maybe one or two Commissioners I'm aware of that have actually

1     tried unearthing prior opinions and reviewing them, I think  
2     the majority of the Commission, including myself, we have been  
3     in the dark as to prior letter opinions and that would no  
4     longer be true. So that is version eight and I don't know if  
5     at this point, I should try and move it or if you want to just  
6     have discussion on it.

7             Chair Varlack: Thank you, Commissioner Yates. That  
8     was actually an incredibly detailed walk through of sort of  
9     where we are, and I very much appreciate your effort, as well  
10    as that of Commissioner Fisher and others who have worked on  
11    this document. I absolutely want to hear if any other  
12    Commissioners have questions or comments. I will note that, I  
13    think the most recent version, version eight, was circulated  
14    yesterday, and so I am not opposed to, you know having,  
15    continuing with the discussion and answering some questions  
16    here and saving the vote until the April meeting, but I open  
17    it up to the rest of the Commissioners to ask any questions.  
18    I think I see a hand raised in Albany. Is that Commissioner  
19    Fisher?

20            Commissioner Fisher: Commissioner Fisher. Thank you,  
21    Chair Varlack. First, and I will keep my remarks brief, first  
22    I want to thank my colleague, Commissioner Jim Yates, for all  
23    the work that he's put into this and there is a number of  
24    people, including Marvin Jacob and others, that also provided  
25    great feedback. I am very satisfied with the form and I saw

1 all versions up to and including version eight. One of the,  
2 and Jim did a great job explaining some of my concerns, one  
3 that I would like to bring forward is that I didn't want this  
4 change to interfere with the regular process of our  
5 professional staff. And another one of our colleagues, George  
6 Weissman I believe, looked at two years' worth of these  
7 opinions, and I believe George, that you found one that you  
8 would have disagreed with. So, the rate at which they do  
9 exactly what we would have done is extremely high and we  
10 wouldn't want to create real inefficiency issues by bringing  
11 so many things back to us that it interferes with their work.  
12 The only other comment that I will make, and this is just based  
13 on a brief conversation I had with Commissioner Dering who is  
14 here with me, he received it yesterday, he hasn't received any  
15 information about this from General Counsel or Deputy General  
16 Counsel, as I and others have benefited from, so I think it  
17 might be wise to let the other Commissioners who just received  
18 it yesterday, to have a little more time and to receive counsel  
19 from our attorneys if they feel that's necessary and to hold  
20 off until the April meeting, but I would very much like to  
21 join in a motion in April to see the adoption of this, hopefully  
22 in its current form. And those are my remarks and I will go on  
23 mute.

24 Chair Varlack: Thank you, Commissioner Fisher.  
25 General Counsel Stamm.

1           Monica Stamm: Yes, I just wanted to clarify one point,  
2           which I don't think affects the substance of the delegation in  
3           any way, which is just that Commission approval is required  
4           under these regs in parts that are referenced in the draft  
5           delegation but really outside activities, official acts to be  
6           expensed and honoraria, Commission approval is required for  
7           all policy makers who engage in these activities under the  
8           conditions set forth in these regs. So it's not just the  
9           statewides and agency heads for whom Commission approval is  
10          required. Staff gives guidance on the rest of the state  
11          officers and employees who are covered, and I don't have  
12          numbers of letter opinions, but I just wanted the full  
13          Commission to understand that. But the way the delegation is  
14          written, I don't think my point affects it in any way, but I  
15          wanted to just ask a point of clarification, with respect to  
16          paragraph three, and this references a schedule of informal  
17          letter opinions, but from the way Judge Yates presented it, I  
18          wasn't clear if you just want a log of informal letter opinions  
19          to the agency heads and statewides or do you want them for all  
20          informal letter opinions that are issued. Either way, staff  
21          can accommodate it. I just wanted to make sure there was an  
22          agreement on what paragraph three was asking for.

23           Commissioner Yates: Thank you, Monica. I am going  
24          to pass that one to Commissioner Jacob and Weissman. They were  
25          the two who were most concerned about this, oh and Braun too,

1 I think Commissioner Braun on several occasions said that it's  
2 important that Commissioners be more aware of what's going on,  
3 so I put that last one in. That's language that Commissioner  
4 Jacob proposed, and I know Commissioner Weissman and Braun  
5 endorsed so I am going to pass it to them.

6 Commissioner Jacob: Chair Varlack.

7 Chair Varlack: Yes.

8 Commissioner Jacob: This is Marvin Jacob and I had  
9 intended that all, we're all, as Commissioners, I would to  
10 like to understand the development of the law that we deal  
11 with and unless we see all of them, we really don't have a  
12 good knowledge. Whether they go to statewides or others, so  
13 the answer is, from my standpoint, all, and that word should  
14 be inserted, and that is a good catch, Monica, very good catch.

15 Commissioner Varlack: General Counsel, any  
16 additional comments on that point?

17 Monica Stamm: No, I think, I think that was really  
18 it, and so like I said I think that the delegation is written  
19 is clear that for all, for anyone who is not an agency head or  
20 statewide, staff will continue to operate in the normal course,  
21 and then with respect to what is now being called approvals,  
22 that that will be handled differently but I think that the  
23 rest of it is clear and we will just, now we understand what  
24 paragraph three means. And just for all Commissioners to

1 understand, you know, staff issues informal letter opinions.  
2 We also take phone calls and emails, so you know we have you  
3 know, we looked at 2018 and 2019, and there is more than a  
4 thousand inquiries that come in, they don't all result in  
5 informal letter opinions. And so a handful do, and we haven't  
6 been tracking it in that way to date, but we will come up with  
7 a method to track when they result in informal letter opinions  
8 so that we can pull this from our log in an organized way to  
9 present it to the Commission in Executive Session.

10 Chair Varlack: Thank you, General Counsel Stamm.

11 Commissioner Braun: If I could add, being relatively  
12 new to this Commission, I did want to see informal opinions  
13 from the past and I did state that I thought we should have  
14 the opportunity, we the Commissioners, whoever wants to among  
15 us, to see informal letter opinions that have been issued by  
16 staff. I commend Commissioners Yates and Fisher for all the  
17 work they've done, Commissioner Jacob for what he added on  
18 this point, and I believe strongly that it should be all  
19 informal letter opinions that are issued. We should get a  
20 listing of them and each Commissioner have the opportunity, if  
21 he or she wants, to see any or all of those informal opinions  
22 so that we can be aware of what's happening and what should be  
23 done, if we think something should flow from there.



1           Chair Varlack: Thank you, Commissioner Braun. Any  
2 other Commissioners would like to be heard on the delegation?  
3 Okay. So, as mentioned, I do think it'd be helpful to give  
4 some of the Commissioners that have not been as involved in  
5 this, the opportunity to just review it and again, to  
6 Commissioner, I think it's Dering's point, to be able to speak  
7 with our General Counsel and Deputy General Counsel should  
8 they have any questions on the impact of this resolution. Does  
9 anyone object to postponing a formal motion on this to the  
10 April meeting?

11           Commissioner Yates: If I may, I was going to make a  
12 motion to move it now, but I won't. I will hold back, but with  
13 one caveat. I would ask that if there is, in the interim  
14 between now and April, any requests by any of the affected  
15 statewide elected officials for a letter opinion, that we as  
16 Commissioners be advised between now and then so that we have  
17 an opportunity to be heard before this takes effect.

18           Chair Varlack: General Counsel Stamm, do you see any  
19 issue with that?

20           Monica Stamm: Sure, we can certainly do that.

21           Chair Varlack: Thank you, and thank you,  
22 Commissioner Yates. Moving on to new and other business. The  
23 first thing is behind tab C is meeting schedule from July  
24 through December 2021. This was introduced at the last meeting,

1 so the Commissioners had an opportunity to take a look at it.  
2 Are there any questions or comments on the meeting schedule?  
3 Okay.

4 Commissioner Jacob: Madam Chair, Madam Chair?

5 Chair Varlack: Yes.

6 Commissioner Jacob: Commissioner Jacob here. I will,  
7 I don't want to hold this point up, but I haven't had a chance  
8 to look at this, and will communicate with counsel, and I  
9 should be able to do that in a day or two, but I will get back  
10 to them if I do have any issues.

11 Chair Varlack: Okay, thank you very much. Does  
12 anybody else, did anyone else just in the interim have any  
13 comments or questions on the meeting schedule? Okay, great. If  
14 you do, within the next couple of days, if you could just reach  
15 out to either General Counsel Stamm or Deputy General Counsel  
16 Levine, that would be great. Is there any other new or other  
17 business?

18 Commissioner Lavine: Yes, Madam Chair.

19 Chair Varlack: Yes, Commissioner.

20 Commissioner Lavine: Can you hear me, Madam Chair?

21 Chair Varlack: We can. You are little low for me,  
22 but we can hear you.

23 Commissioner Lavine: Is that better?

1 Chair Varlack: That is better, thank you.

2 Commissioner Lavine: Alright, thank you. I have  
3 several subjects I would like to address today. The first is  
4 Executive Order 202.7. On September 22, 2020.

5 Chair Varlack: One minute, Commissioner. Can you  
6 hear me?

7 Commissioner Lavine: Yes.

8 Chair Varlack: I just want to make sure that I heard  
9 you. You said Executive Order, what was the number?

10 Commissioner Lavine: 202.7.

11 Chair Varlack: Okay, and just to understand, is there  
12 going to be action requested on this?

13 Commissioner Lavine: Yes.

14 Chair Varlack: And what is the, what will the  
15 requested action be?

16 Commissioner Lavine: The requested action, I will  
17 move at the conclusion of my remarks that an informal subpoena  
18 be directed to the Governor's counsel.

19 Chair Varlack: Okay, thank you.

20 Commissioner Lavine: Or an informational subpoena,  
21 better characterized.

22 Chair Varlack: Okay, thank you.

1 Commissioner Lavine: If I may continue, Madam Chair?

2 Chair Varlack: Yes, absolutely.

3 Commissioner Lavine: Yes. On September 22, 2020 the  
4 Albany Times Union made a FOIL request to the Executive Chamber  
5 for records indicating the identities of those within the ambit  
6 of Executive Order 202.6, which was ultimately superseded by  
7 202.7, and also asked if there were any gifts exemptions or  
8 recusals. The response emanating from the records access  
9 officer of the Executive Chamber was made, dated March 5, 2021  
10 and stated no records responsive to the request were found. In  
11 the most charitable characterization, this response from the  
12 Executive Chamber is disingenuous. In light of the governor's  
13 counsel's acknowledgement of the vaccination major domo's  
14 status, the response can fairly be described as a sham. It  
15 also appears that some of the purported volunteers may not  
16 actually be volunteering, which is to say they're being paid.  
17 They're being paid by their employers, which invites many  
18 ethics questions, particularly if the employers had business  
19 before the state. Given our jurisdiction for Executive Law  
20 94(9)(j), which states we shall advise and assist any state  
21 agency in establishing rules, regulations relating to possible  
22 conflicts between private interests and official duties, I  
23 move that an informational subpoena be directed to the  
24 governor's counsel for all pertinent information relating to  
25 Executive Orders 202.6 and 202.7, including a list of all

1 individuals who have been or now are within the ambit of  
2 Executive Orders 202.7 or 202.6.

3 Chair Varlack: There is a motion on the floor. Do  
4 we have a second?

5 Monica Stamm: I saw Commissioner Weissman.

6 Commissioner Weissman: Yeah, I'll second it.

7 Chair Varlack: Okay, thank you, Commissioner  
8 Weissman. We will open it up for discussion. The first thing  
9 I just want to ask for clarification on. I understand, I think  
10 I understand, that there was a vote related to this matter at  
11 the December meeting. I am not sure that that vote, I am not  
12 sure if it's exactly the same issue. General Counsel Stamm, I  
13 don't know if you or actually Commissioner Lavine, I don't  
14 know if you can shed any light on whether or not this is a  
15 different request.

16 Commissioner Lavine: Same subject, different motion.

17 Monica Stamm: Yes, I would agree with Commissioner  
18 Lavine. There have been votes on whether to make a request for,  
19 there were votes on making a request for whether or not there  
20 is a process in place, there have been votes on whether or not  
21 to send a written letter to the chamber, making a written  
22 request. This is different in that it's, it would be  
23 authorizing staff to issue a subpoena, which, if I understand,  
24 would be under the Commission's authority under 94(17).

1           Chair Varlack:   Okay, thank you.   Any questions or  
2 comments from any Commissioner?

3           Commissioner Weissman:   Madam Chair?

4           Chair Varlack:   Yep, go ahead, Commissioner Weissman,  
5 and then Commissioner Fisher, I will call on you next.

6           Commissioner Weissman:   Okay, thank you very much.  
7 The reason I am seconding this motion has to do with a recent  
8 article that appeared in the Washington Post relating to a  
9 particular person who apparently has, works for a company that  
10 has business interests down in the New York Metropolitan area,  
11 sits on a Board of an Authority, and had the opportunity to  
12 use governmental resources not only for, to do the volunteer  
13 work, but also in terms of lodging. So I am just trying to,  
14 you know, get to the bottom of where this really is, in terms  
15 of where the lines, where lines are being drawn, in terms of  
16 volunteering and then other ethical obligations, so thank you.

17           Chair Varlack:   Thank you, Commissioner Weissman,  
18 Commissioner Fisher?

19           Commissioner Fisher:   Thank you, Chair. I wanted to  
20 ask about the practical impact of this, so if I am  
21 understanding correctly, there are volunteers related to the  
22 COVID pandemic that we believe are not subject to our  
23 jurisdiction because they're exempted, but we want a list of  
24 who those people are, even though we don't have any

1 jurisdiction over them. So I am not sure what, if we had that  
2 list we would do with it, and I believe there was reporting on  
3 a different case where one of these volunteers had something  
4 referred to the public integrity unit, is that right, of the  
5 Attorney General's office. So, if we don't have any  
6 jurisdiction, what would we do with this information if we had  
7 it, and I guess I'll leave it as that.

8 Commissioner Lavine: May I respond to Commissioner  
9 Fisher, Madam Chair?

10 Chair Varlack: Of course.

11 Commissioner Lavine: The provision of the Executive  
12 Law I cited says we shall advise agencies with respect to  
13 conflict of interest matters. We can hardly make an informed  
14 assessment and convey our assessment to the Executive Chamber  
15 if they are withholding the information with respect to the  
16 implementation of the Executive Order. I repeat, for emphasis,  
17 given the fact that the Governor's acting counsel publicly  
18 acknowledged that the leader of the vaccination program is a  
19 supposed volunteer and has been vetted, it belies the assertion  
20 made by the Chamber's record access officer that they don't  
21 have any information on the subject. Therefore, we ought to  
22 elicit it, make an assessment, and convey our conclusions, if  
23 any, to the Executive Chamber.

1 Chair Varlack: Thank you, Commissioner Lavine. Do  
2 any other Commissioners want to be heard on this motion?

3 Commissioner Dering: Madam Chair?

4 Chair Varlack: Yes.

5 Commissioner Dering: Jim Dering. Just adding to  
6 Commissioner Fisher's comment, if, and Commissioner Lavine's  
7 concerns, I think with regard to a FOIL request, if a requestor  
8 has a concern with regard to the response, the remedy would an  
9 article 78 proceeding, so I think the requestor would have the  
10 ability to pursue that. In terms of advise and assist, I just  
11 personally don't see how issuing a subpoena falls within the  
12 category of advise and assist, so those are my comments.

13 Chair Varlack: Okay, Commissioner Dering.  
14 Commissioner Yates?

15 Commissioner Yates: I wanted to take issue with an  
16 assertion that was made and that is that we don't have  
17 jurisdiction. Without speaking to the propriety of a subpoena  
18 at this point in time, one thing that I've raised in three  
19 consecutive meetings here, and I want to, I don't want to ever  
20 put it aside is the following, and that is that the Executive  
21 Law allows the Governor to suspend, temporarily, laws that are  
22 necessary to be suspended to deal with a disaster or emergency.  
23 Fine. One of the, Executive Order 202.6 and 202.7, which  
24 Commissioner Lavine is referring to, says that anyone who is



1 either a volunteer or nominally paid is exempt from Public  
2 Officer Law 74. Public Officer Law 74 is the law that says  
3 that, if you're acting as a public official with public  
4 authority, that you have to follow certain ethical rules. You  
5 can't contract to your family, to yourself. You can't award  
6 bids to yourself. You can't accept gifts. You can't accept  
7 bribes, etc, etc. So the question that arises is whether or  
8 not the Governor has the authority to issue an Order that says  
9 disregard all conflict laws and all conflicts concerns if a  
10 person's nominally paid, even if they're acting on behalf of  
11 the Governor and they wield extraordinary power. I don't want  
12 to concede the point that was made earlier by another  
13 Commissioner, that somehow or other, that's an authority that  
14 the Governor has. I don't want to concede that the Governor  
15 can wipe away all conflicts that may exist and say that it's  
16 being done because it's necessary to the dealing with the  
17 disaster or with COVID. So therefore, I think we have a  
18 legitimate concern about whether ethical laws are being  
19 violated. I don't have to remind you, I mean, if you all  
20 remember two years ago or three years ago when there was a  
21 disaster in Puerto Rico, and apparently, we were told,  
22 according to newspaper stories, that a couple people that had  
23 no experience with electrical work at all were given a hundred  
24 million or two hundred million dollar contract to do the work  
25 in the Puerto Rico, and they were contributors but that they

1 were not qualified. Now, you could call them volunteers if  
2 you want, but still, there was a lot of conflict that was done,  
3 and electric work in Puerto Rico was never done. We want to  
4 make sure that nothing like that ever happens in New York, and  
5 the only way to do that is that we keep vigilant in our  
6 responsibility to deal with ethical conflicts. I will not  
7 concede that a person who wields power on behalf of the  
8 Governor or the state is free of examination by us if there is  
9 a conflict that becomes apparent.

10 Chair Varlack: Okay, thank you, Jim. Commissioner  
11 Fisher?

12 Commissioner Fisher: It seems to me that the  
13 legislative branch of New York State government has a strong  
14 interest in these Executive Orders and recently has taken  
15 action and had discussion around whether they should be  
16 extended or modified. And it seems to me that that's the  
17 appropriate branch of government to contest the Governor's  
18 assertion of what he is able to do under these Executive Orders,  
19 and I still don't see where we have any jurisdiction, but it  
20 seems like the state legislature has plenty. Likewise, if the  
21 state legislature wanted to change the statute that we operate  
22 under to give us jurisdiction over volunteers subject to this  
23 Executive Order, then they have every power to do that, and if  
24 they give that to us, I think we should take up that work, but

1 I don't see why we should take up work that isn't ours to do  
2 and therefore, I would be voting against this motion.

3 Commissioner Dering: Adding to that, if I could,  
4 Madam Chair.

5 Chair Varlack: Yeah.

6 Commissioner Dering: My recollection is that the  
7 statute also provides the legislature the ability to overturn  
8 an Executive Order issued by the Governor, so, to Commissioner  
9 Fisher's point. Thank you.

10 Chair Varlack: Thank you. Commissioner Yates, did  
11 you have a comment?

12 Commissioner Yates: Yes. I am not talking about  
13 changing the statute. I am talking about following the statute.  
14 The statute says, in particular, that any suspension order  
15 shall provide for the minimum deviation from the requirements  
16 of the statute which is suspended, consistent with the disaster  
17 action deemed necessary. In other words, all I am saying is  
18 this, if the Governor wants to issue an order that says I don't  
19 care about ethical conflicts and JCOPE can't look into them  
20 for a volunteer, then let's apply the statute. The statute  
21 says it's got to be the minimum deviation necessary to deal  
22 with the crisis, and that's all I'm saying, is let's follow  
23 the law. I am not asking for a change in the law.

24 Chair Varlack: Commissioner, I see your hand raised.

1           Commissioner Dering: My concern with that, and it  
2 relates to the concerns that Commissioner Fisher brought up,  
3 is that then what we would be doing, I believe, is challenging  
4 the Governor's Executive Order based on our reading of the  
5 Executive Law, and I just don't think that's our place. I think  
6 that's the place of a court, if there was a challenge, or I  
7 think within the Executive Law, the legislature has the ability  
8 to overturn an Executive Order, so I just don't, from a  
9 jurisdictional standpoint, I just don't see our place with it.

10           Commissioner Yates: If I may again, just to respond.  
11 That's actually where I maybe vary from Commissioner Lavine's  
12 motion. His proposed remedy is to find out, first of all, who  
13 is exempted. I had previously made a motion or at least raised  
14 the issue, I forget, I don't think it was a formal motion, on  
15 two or three occasions, and that is that we ought to get  
16 clarification as to whether or not we have jurisdiction when  
17 we become aware of a conflict. If someone submits a sworn  
18 affidavit to us telling us that a volunteer has self-dealt or  
19 taken a gift or honoraria or some kind of self-reward to  
20 himself, or her family or his family, then the question is do  
21 we have the authority to go forward or not. I asked counsel  
22 last two times to write to the Governor's counsel to find out  
23 whether or not the intent of the Governor was to exclude us or  
24 preclude us from being able to act on a complaint when there  
25 is a clear conflict. That hasn't happened. So, we could do an

1 informational subpoena the way Commissioner Lavine has offered,  
2 or on the other hand, maybe it is appropriate for us to go  
3 ahead and ask for a formal opinion from the Attorney General.  
4 We could ask Attorney General Letitia James does she think  
5 that total preclusion of any examination of conflict by this  
6 Commission is lawfully covered by that Executive Order, and  
7 I'd actually welcome, if I can't get it from Governor's counsel,  
8 then I'd like to get it from Attorney General James.

9 Chair Varlack: Okay. So before we move on, does  
10 anyone have any additional comments? Okay. Commissioner Yates,  
11 are you seeking to amend Commissioner Lavine's motion at this  
12 time?

13 Commissioner Yates: No, I'd rather continue this  
14 discussion among the Commissioners.

15 Chair Varlack: Okay, so seeing no other hands, Deputy  
16 General Counsel Levine, can you please repeat the motion that's  
17 on the floor?

18 Martin Levine: Yes ma'am, and I would actually ask  
19 that Commissioner Lavine clarify, because I was trying to keep  
20 up on notes, but the motion was to issue an informational  
21 subpoena to the Governor's counsel for all individuals covered  
22 by Executive Order 202.6 and .7. Was there additional material  
23 that you were seeking, Commissioner Lavine?

1 Commissioner Lavine: Any other information related  
2 to recusals by volunteers.

3 Marine Levine: And any other information related to  
4 recusals by volunteers.

5 Chair Varlack: Okay.

6 Commissioner Lavine: Yes.

7 Commissioner Horwitz: Madam Chairman, this is Dan  
8 Horwitz.

9 Chair Varlack: Yes, Commissioner.

10 Commissioner Horwitz: I have a question, really I  
11 guess, for our General Counsel. First of all, what authority,  
12 what section of section 94 would this subpoena be issued  
13 pursuant to?

14 Monica Stamm: I believe it would be under 94(17),  
15 which gives us, the Commission, the ability to, 17(c), which  
16 gives the Commission the ability to issue subpoenas.

17 Commissioner Horwitz: Has the Commission ever voted  
18 to issue a subpoena under 17(c) in the Public Session?

19 Monica Stamm: No, not that I recall.

20 Commissioner Horwitz: And is the reason that, and  
21 the Commission has issued those subpoenas historically, is  
22 that correct?

1           Monica Stamm: Yes, the Commission, any subpoena the  
2 Commission issues is pursuant to 17(c).

3           Commissioner Horwitz: And historically, those  
4 subpoenas, those 17 subpoenas have been issued confidentially  
5 because they were pursuant to the confidentially requirements  
6 under the Public Officers Law, right?

7           Monica Stamm: The majority of subpoenas that have  
8 been issued under 17(c) have been done in connection with  
9 investigative matters and so they have been covered by the  
10 confidentiality that's applied to investigative matters. I  
11 think, generally speaking, if we are dealing with a matter  
12 relating to an individual, whether it is the subject to an  
13 investigation, or a corporate entity, a lobbyist, or a client,  
14 in any context, if it relates to individual we've done it in  
15 Executive Session.

16           Commissioner Horwitz: So I'm curious then, if the  
17 Commission was to vote to issue the subpoena that the subject  
18 of the motion, would the return of the subpoena, the  
19 information provided in response to the subpoena, be covered  
20 under the confidentially rules of the Public Officers Law?

21           Monica Stamm: Of the Executive Law?

22           Commissioner Horwitz: Yeah. That's an important  
23 question given, historically, the use of these subpoenas for  
24 investigative matters. This certainly sounds like it's more

1 an investigative question that anything else. So I am curious  
2 about whether, notwithstanding this motion was made in the  
3 Public Session, whether the return would be confidential. And  
4 if the answer is unclear, I think that is also important for  
5 the Commission to understand.

6 Monica Stamm: So, I think it is unclear. I don't  
7 know that, again, this not a situation we have ever  
8 contemplated before, but I certainly would recommend, that if  
9 the return included individual guidance that was given to any  
10 volunteers or anyone else who's covered under 202.6 or .7 of  
11 the Executive Order, that that is not the kind of information  
12 that we would normally make publicly available and so that has  
13 to be given some thought, and I don't have an answer.

14 Commissioner Horwitz: Yeah, thank you Madam Chair.  
15

16 Chair Varlack: No problem at all. Are there any  
17 other questions or comments with respect to the motion on the  
18 floor? Okay, so why don't we move ahead to the vote on the  
19 motion unless, General Counsel Stamm, considering the last  
20 question you think, your recommendation would be that we need  
21 to hold until we have an answer?

22 Monica Stamm: I think the Commission could consider,  
23 it is really for the Commission to decide. It's an open issue  
24 and if that's the reason why Commissioners don't want to do



1 this, you know, approve a subpoena in the Public Session, that  
2 is certainly a legitimate concern for Commissioners to have in  
3 voting on this motion, and other Commissioners may not share  
4 that concern. So I think it can go forward.

5 Commissioner Horwitz: Madam Chair, I do think that  
6 I would like to have a more cogent analysis from the staff  
7 about the implications of the subpoena. First, since we've  
8 never, this is the first time we've done this, and the fact  
9 that these kinds of subpoenas have historically been used,  
10 sounds like almost exclusively, for the conduct of  
11 investigations. And while I think the public policy questions  
12 that Commissioners have raised today about adherence to  
13 conflict of interest rules is, of course, critical, and, of  
14 course, something that generally is within our , our purpose,  
15 I do think that a more cogent analysis of the answer to this  
16 question is important for Commissioners to understand before  
17 we are asked to vote on something like this. Particularly  
18 because, notwithstanding the fact that some Commissioners, who,  
19 without naming these people who are the subject of newspaper  
20 articles, there may be others who are not as high profile as  
21 these people and whose rights may be implicated, and I think  
22 we need to sensitive to that as well. Notwithstanding the  
23 important public policy concerns that Commissioners have  
24 raised about this issue.

1           Chair Varlack: Thank you, Commissioner Horwitz.  
2 Commissioner Lavine, with the point that has been raised, are  
3 you amenable to tabling your motion until the next meeting so  
4 that Commissioners can receive additional views on the matter  
5 raised by Commissioner Horwitz, or would you like to proceed  
6 with a vote?

7           Commissioner Lavine: I am not amenable. I agree with  
8 the proposition that whatever information that we receive  
9 should be reviewed by the Commission, with respect to whether  
10 it should be divulged to the public or not. That's our  
11 prerogative as a Commission. I will not withdraw the motion  
12 today.

13          Chair Varlack: Okay, thank you.

14          Commissioner Horwitz: Madam Chairman. I do have a  
15 point of order that since the author of the amendment has  
16 conceded that the subject matter of the subpoena is subject to  
17 the Executive Law confidentiality rules that we abide by, then  
18 I would submit that the issuance of the subpoena itself is not  
19 appropriately discussed in the Public Session. I think the  
20 motion is out of order.

21          Commissioner Lavine: I do not agree with learned  
22 counsel, Madam Chair. I am simply accommodating a concern. In  
23 the normal course, we as a Commission, would review the  
24 material. If it appears that there is some legal imperative to

1 withhold it in camera, then, of course, we should do that. But  
2 it should not impede a vote on the resolution today, nor is  
3 there any legal requirement whatsoever that the motion be  
4 confined to the Executive Session.

5 Chair Varlack: Thank you, Commissioner Lavine.

6 Commissioner Jacob: Madam Chair, Madam Chair.  
7 Commissioner Jacob here.

8 Chair Varlack: Hi, Commissioner Jacob.

9 Commissioner Jacob: I can't agree with the reading  
10 of section 17(c) that Commissioner Horwitz is putting to it.  
11 Section 17 begins by saying, in addition to any other, any  
12 other powers and duties specified by law, the Commission shall  
13 have the power and duty to. Begins with promulgating rules. If  
14 in connection, for example, with promulgation of a rule, this  
15 Commission needed information and had to issue an informational  
16 subpoena, I would not agree 17(c) to mean that that could not  
17 be done. We need the ability as a Commission, since we regulate,  
18 and we also enforce. The notion of reading section 17 as being  
19 exclusively an enforcement provision is belied by the  
20 introductory language 'in addition to any other'. Promulgation  
21 of rules follows immediately. So we should, and we do, have  
22 the power to issue informational subpoenas in order to conduct  
23 the business of the Commission. And to read 17(c) as meaning  
24 only enforcement subpoenas because our recollection is that we

1 have not issued any in connection with our regulatory or other  
2 duties is, in my view, an incorrect reading of section 17, and  
3 I would urge that we do vote on this today. I would agree  
4 with Commissioner Lavine in that regard. Thank you.

5 Chair Varlack: Thank you. Commissioner Dering?

6 Commissioner Dering: Looking at 17(c), it says  
7 "conduct any investigation necessary to carry out the  
8 provisions of this section. Pursuant to this power and duty,"  
9 the Commission may issue subpoenas. So number one with regard  
10 to that, I don't see the motion, as I understand it, is to  
11 issue an informational subpoena under the authority to advise  
12 and assist, I don't see that. And then for 17(c), the way I  
13 read it is that clearly it relates to conducting an  
14 investigation. So in looking at this, I question whether we  
15 even have the ability to issue the informational subpoena as  
16 proposed, and if somehow we had that authority under 17(c),  
17 which I am not seeing it, I don't see how we have this vote in  
18 public because I think it would be subject to the  
19 confidentiality provisions. Thank you.

20 Chair Varlack: Thank you, Commissioner Dering. Okay,  
21 at this point, I think I am going to call for a vote on the  
22 motion on the floor. All in favor?

23 Martin Levine: Please raise your hand until I call  
24 your name on the motion. I see McNamara in favor, Weissman,

1 Braun. Have I missed anyone? Okay, let me record that, and I  
2 will call the remaining roll? Commissioner Cohen?

3 Monica Stamm: Wait, Commissioner Yates has his hand  
4 up, but I am not sure if he's voting. Commissioner Yates, are  
5 you voting in favor? You're muted.

6 Commissioner Yates: Sorry I stepped away for a  
7 second and I'm back that's all I was saying.

8 Martin Levine: Okay, would you like to vote in favor?

9 Monica Stamm: I think Martin you can keep going.

10 Chair Varlack: You're muted, Commissioner Yates.

11

12 Martin Levine: Okay, I'll come back at the end.  
13 Commissioner Cohen on the motion?

14 Commissioner Cohen: No.

15 Martin Levine: Commissioner Dering?

16 Commissioner Dering: No.

17 Martin Levine: Commissioner DiPirro?

18 Commissioner DiPirro: No.

19 Martin Levine: Commissioner Fisher?

20 Commissioner Fisher: No.

21 Martin Levine: Commissioner Horwitz?

22 Commissioner Horwitz: No.

1 Martin Levine: Commissioner Jacob?

2 Commissioner Jacob: Yes.

3 Martin Levine: Commissioner Lavine?

4 Commissioner Lavine: Yes.

5 Martin Levine: Judge McCarthy?

6 Commissioner McCarthy: Yes.

7 Martin Levine: Commissioner McNamara I recorded.  
8 Judge Yates?

9 Commissioner Yates: Yes.

10 Martin Levine: Thank you, and Chair Varlack?

11 Chair Varlack: No.

12 Martin Levine: That's 1, 2, 3, 4, 5, 6, 7 in favor.  
13 Motion fails.

14 Chair Varlack: Thank you. Commissioner Lavine, your  
15 next item?

16 Commissioner Lavine: Yes, Madam Chair. If I may ask  
17 staff, what is the status of the records access policy proposal  
18 that was before us several meetings ago?

19 Monica Stamm: It's just pending. We've obviously,  
20 other issues have been more pressing, and have needed to be  
21 addressed by the confidentially and records access committee,

1 so we can bring it back to the Commission at a future meeting.  
2 It is just there is a lot on the agendas.

3 Commissioner Lavine: Yes. Has it been established  
4 to your satisfaction, madam General Counsel, that the prior  
5 discussion has it that disclosure would be made of an inquiry  
6 with respect to an FDS to the filer if the Commission were  
7 subject to FOIL? And that the practice mandated by New York  
8 City Charter of the New York City Conflicts of Interest Board  
9 is to divulge to the filer if an inquiry has been made?

10 Chair Varlack: Commissioner Lavine, is this an  
11 informational point or will you have a related motion?

12 Commissioner Lavine: Well, I may have a motion  
13 depending on what responses I get, Madam Chair, from staff.

14 Chair Varlack: Okay, thank you.

15 Monica Stamm: So, I think as a matter of law, the  
16 Conflicts of Interest Board, it's in the City Charter I believe,  
17 and if anyone, Martin or someone else, can correct me if I am  
18 wrong, I think it's a matter of the City Charter, the Conflict  
19 of Interest Board is required to disclose to filers if their  
20 FDS is requested. We've researched the question of whether  
21 FOIL requests are publicly available under FOIL and they are,  
22 but obviously FOIL exceptions would apply if those requests  
23 were made. So, as you mentioned, we are not subject to FOIL,  
24 but if you are making the analogy then, if we were subject to

1 FOIL, I think that requests for public records would be  
2 publicly available, but again, subject to the exceptions under  
3 the FOIL law.

4 Commissioner Lavine: Thank you. I now have a  
5 question and follow up to the staff. During the past three  
6 years, has any request been made by the Executive Chamber,  
7 someone reasonably supposed to be affiliated with the Executive  
8 Chamber, or the Office of Inspector General for the FDS of any  
9 member of the Commission?

10 Monica Stamm: So, I don't have that information, but  
11 this is an open question pending before the Commission whether  
12 this information is going to be made publicly available, and  
13 so staff cannot answer that question absent a vote of the  
14 Commission to disclose such information. So, the current state  
15 of the records access regulations is that that information is  
16 not information staff makes available. The proposal in the  
17 records access, the amended records access regulation, was to  
18 allow filers to find out if their FDS has been requested but  
19 not who made the request. And so, your question goes to the  
20 heart of the issue, which is pending before the Commission and  
21 has not yet been decided, so staff can't answer it in this  
22 setting.

23 Commissioner Lavine: I'm not sure I follow. I'm not  
24 sure I fully apprehend your answer, madam General Counsel. I



1 am asking the question. Has Executive Chamber, someone  
2 affiliated with the Executive Chamber, or the Inspector General  
3 made a request within the last three years for the FDS of any  
4 Commissioner? I am not asking you to identify a specific  
5 Commissioner; I am simply asking has such a request been made.  
6 Surely you must know the answer.

7           Monica Stamm: I understand your question, and I am  
8 saying that until the Commission rules on this issue, I can't  
9 answer the question and I would direct staff on the (inaudible)  
10 that they should not answer the question until the Commission  
11 rules on this issue. But I would also ask, if this goes to  
12 your personal request as to whether or not your FDS has been  
13 requested by the Chamber or the Inspector General's office,  
14 then I would question whether you should be raising this in  
15 this context.

16           Commissioner Lavine: Well, I believe under the  
17 conflicts of interests policy of the Commission, the ultimate  
18 determination of whether there is a conflict of interest on  
19 the part of a Commissioner participating is the prerogative of  
20 the Commissioner, and I believe that the question that I just  
21 put to you does not constitute a conflict of interest on my  
22 part. Now, on the follow on are you asserting now that the  
23 Commission institutionally is not entitled to answer to this  
24 question?

1           Monica Stamm: No. I am saying the Commission votes  
2 on the issue of whether staff can disclose who has made  
3 requests, then staff will follow that directive. But this is,  
4 as it stands, the Commission hasn't ruled on this issue. So  
5 until, the Commission can address this right now. If you want  
6 to make a motion, the Commission can vote on that motion and  
7 then staff will do what the Commission directs us to do, but  
8 as it stands right now, this is not information that the staff  
9 makes publicly available and so until the Commission rules on  
10 that issue, whether it's by motion or a change in the  
11 regulations, staff can't answer the question in a Public  
12 Session.

13           Commissioner Lavine: This term publicly available  
14 includes within its ambit communication only with the  
15 Commissioners? Is it your position that staff is not  
16 authorized to answer the question that I just put to you,  
17 without identifying any specific inquiry?

18           Chair Varlack: I'm sorry. Go ahead Commissioner  
19 Lavine.

20           Commissioner Lavine: Is it the position of, is it  
21 the position of staff that the generic question, has any  
22 inquiry been made by the Executive Chamber or the Inspector  
23 General's office for any Commissioners without identifying the

1 specific Commissioner, that that, the staff will withhold that  
2 information from the Commission? Is that the position of staff?

3 Monica Stamm: Not withholding the information from  
4 the Commission. The Commission hasn't addressed this issue.  
5 Once the Commission decides the question then staff will share  
6 the information, but I can't share it, and I would caution any  
7 staff not to share the information in the Public Session,  
8 absent a decision by the Commission.

9 Commissioner Lavine: Well on the follow up, madam  
10 General Counsel? Suppose the same question were put to you in  
11 the Executive Session, would you answer the question in  
12 Executive Session?

13 Monica Stamm: So, if we were asked a question. Go  
14 ahead, sorry Chair.

15 Chair Varlack: That's okay. I just want to make sure  
16 that I understand, General Counsel Stamm, what you're saying.  
17 What I understand is that the general policy of the staff at  
18 this time is not to reveal who has requested a copy of the FDS.  
19 Whether it is the Executive Chamber or any other individual.  
20 And that absent a vote of the Commission to change that policy,  
21 that is the way staff would proceed, is that correct?

22 Monica Stamm: It's not that it's a policy. The  
23 Commission had approved records access regulations that  
24 dictate what information staff makes publicly available, and

1 staff follows those rules, and those rules currently do not  
2 cover the information that Commissioner Lavine is requesting.  
3 And because this is a matter that is of debate among the  
4 Commissioners right now whether this information should be  
5 publicly available, I'm uncomfortable answering the question  
6 in a Public Session until the Commission has ruled on the  
7 question. So it's not a matter of policy for staff right now.  
8 It is a matter of policy of the Commission, and the Commission  
9 can change its position by a motion or to change the regs and  
10 then staff will have direction. But this information falls  
11 into the category of information that is currently not publicly  
12 available, and it's completely in the Commission's discretion  
13 whether it should be or shouldn't be. But it's not in staff's  
14 discretion.

15 Commissioner Lavine: Well that response, Madam Chair,  
16 prompts me to renew the question. Would you answer the question  
17 that I have put to you in the Executive Session?

18 Chair Varlack: So Commissioner Lavine, based on what  
19 General Counsel Stamm just indicated, I don't know that, and  
20 of course she can answer, but it doesn't seem that it would  
21 matter. It seems as though the current rules don't allow for  
22 the sort of the provision of that information and General  
23 Counsel Stamm, correct me if I am wrong.

1           Monica Stamm: That's where I am right now. I am  
2 happy to discuss it further in Executive Session.

3           Commissioner Lavine: Yes, well, thank you very much,  
4 Madam General Counsel and Madam Chair. I move, Madam Chair,  
5 that the staff be directed to answer the question, within the  
6 last three years, has any request been made by the Executive  
7 Chamber, an individual who reasonably could be construed as  
8 being affiliated with the Executive Chamber, or the Office of  
9 Inspector General asked to review the financial disclosure  
10 statement of any member of the Commission, past or present?

11          Chair Varlack: Thank you, so there's a motion on the  
12 floor. Is there a second?

13          Commissioner Weissman: Second, Commissioner Weissman.

14          Chair Varlack: Thank you, Commissioner Weissman. The  
15 floor is open for any questions, comments, or debate on the  
16 motion. Commissioner Dering?

17          Commissioner Dering: This is a question for  
18 Commissioner Lavine regarding his motion. Is that to disclose  
19 publicly or in Executive Session?

20          Commissioner Lavine: Publicly.

21          Commissioner Dering: One comment on the discussion  
22 that happened before. If it's not able to be released publicly  
23 pursuant to the regulations, I don't even think that JCOPE

1 Commissioners could waive the regulations. I think we'd have  
2 to amend the regulations, that's my only comment.

3 Chair Varlack: Thank you Commissioner Dering.  
4 Commissioner Fisher?

5 Commissioner Fisher: I'm planning to vote against  
6 this motion. I don't believe it's right for us to give  
7 ourselves some sort of special access to information, if this  
8 applies only to requests of our Commissioners and not to other  
9 people that file disclosures. We are not setting any rules  
10 about somebody else that makes a request about whether someone  
11 from the Executive Chamber and elsewhere has asked for  
12 financial disclosure statement about them, so I don't think  
13 it's right to give ourselves access to information until we've  
14 settled the larger question of, are financial disclosure filed  
15 by anyone subject to disclosure when someone else asks for  
16 that record. So I think we should consider this in a much  
17 broader way, and I will vote against this.

18 Chair Varlack: Thank you, Commissioner.

19 Commissioner Lavine: Well, may I ask Commissioner,  
20 may I ask Madam Chair, Commissioner Fisher a question?

21 Chair Varlack: Of course, Commissioner Lavine.

22 Commissioner Lavine: Yes, Commissioner Fisher. If  
23 the motion were to amend the records access policy to provide  
24 that our policy be consistent with the protocol of FOIL or the

1 New York City Conflicts of Interest Board, would you vote in  
2 favor of that motion?

3 Commissioner Fisher: Not at this time. My concern  
4 would be whistleblowers. I would want to make sure that there  
5 were protection, if someone in a whistleblower scenario was  
6 obtaining this information from us, they would want to know,  
7 I think, that we weren't simply going to turn their name over  
8 to their boss or someone else that they might be, I guess,  
9 about to or preparing information regarding to whistleblower  
10 scenario. So I think there is a lot of work that needs to be  
11 done about the different scenarios in which someone would ask  
12 to find out whether someone has requested information about  
13 their financial disclosure and whether it was retaliatory in  
14 nature, as it might be, in the case of a whistleblower so no,  
15 as it currently stands, I would continue to be opposed.

16 Commissioner Lavine: On the follow on, Madam Chair.  
17 Commissioner Fisher, surely you're not positing that there is  
18 any issue with regard to retaliation regarding the Executive  
19 Chamber, so suppose the motion were made that any filer that  
20 asked to have divulged to that filer whether the Executive  
21 Chamber has asked for the FDS, would you vote for that motion?

22 Commissioner Fisher: I believe we should adopt the  
23 policy after considering the various ramifications and apply  
24 it not just to the Executive Chamber or this entity or that

1 entity, and not just Commissioners or Commissioners plus some  
2 other. I think there should be a general rule applied to who  
3 can request information about who has requested an FDS that  
4 they file, and until we've gone through that with care, I am  
5 not willing to vote for any new policy along the lines you're  
6 suggesting.

7 Commissioner Lavine: Thank you, Commissioner Fisher,  
8 and thank you, Madam Chair.

9 Chair Varlack: No problem, Commissioner Lavine. Are  
10 there any other questions or comments or debate on the motion  
11 that is on the floor?

12 Commissioner Weissman: Madam Chair? Commissioner  
13 Weissman. This is to General Counsel Stamm. the question raised,  
14 or the issue raised by Commissioner Fisher regarding  
15 whistleblowers, would that fall within the exceptions of 87(2)  
16 of the Public Officers Law, Article 6?

17 Monica Stamm: I would have to look at the exceptions.  
18 As you know we are not subject to FOIL, so I don't regularly  
19 apply them or interpret them, I just, I don't know the answer.  
20 I don't know that we would always know if somebody is a  
21 whistleblower, because we wouldn't necessarily be aware of why  
22 their asking for the FDS. They don't have to state a reason.  
23 So, you know, we wouldn't necessarily have that information,  
24 unless they filed a complaint with us.



1           Commissioner Weissman: But that same logic holds  
2 true whether Chair Varlack or I work for the Department of  
3 Transportation and somebody asks for our personnel file and  
4 they got it, and then you know, we could go ask for it. We  
5 could file our own FOIL request to figure out who FOILED for  
6 our personnel record, correct? This is the extent of the  
7 absurd that we're talking about.

8           Monica Stamm: Correct, but for whatever reason we're  
9 exempted from FOIL, so there was a decision when the law was  
10 passed not to have this type of information necessarily  
11 publicly available, and it was for the Commission's discretion.  
12 We are specifically exempted from FOIL. The statute specifies  
13 what records are publicly available. These are not included.  
14 So there are different reasons for why that might be. I can't  
15 begin to put my head in the mind of why that was done but this  
16 is, we are different, and for that reason alone, the law makes  
17 us different.

18           Commissioner Weissman: Well, Monica, at the end of  
19 the day, I think Commissioner Lavine's motion is more or less  
20 just about getting us to a place, in this particular instance,  
21 where every other state agency is, okay, and that's all about  
22 this.

23           Monica Stamm: Currently, his motion is just about  
24 Commissioners getting information about their filings. So I

1 understand if there is going to be a broader policy change  
2 recommended, whether it's going to be by motion or as part of  
3 the records access regulations, but the current motion is about  
4 Commissioners getting information about their filings.

5 Commissioner Weissman: Well then, I am going to ask,  
6 I am going ask Commissioner Lavine to expand his motion, so we  
7 end, so this Commission ends up being treated as all other  
8 state agencies are.

9 Commissioner Lavine: Well, if I may, Madam Chair.  
10 First of all, I want to clarify the characterization made of  
11 the pending motion by our General Counsel. The pending motion  
12 does not require staff to divulge the names of the  
13 Commissioners whose filing has been requested, if at all. It  
14 certainly does not require divulging to the particular filing  
15 Commissioner. It simply directs the staff to answer a very  
16 narrow question. Has the Executive Chamber or the Office of  
17 Inspector General within the last three years asked to see,  
18 review, an FDS of any Commissioner, presently serving or has  
19 served during the period? Doesn't ask for anything else to be  
20 divulged. Just the answer to that question. Has any inquiry  
21 been made? That's the motion.

22 Chair Varlack: Okay, so Commissioner Lavine, did you  
23 have, I see you Commissioner Yates. I just want to ask,

1 Commissioner Lavine, do you have a response to Commissioner  
2 Weissman's question to you?

3 Commissioner Lavine: Yes. When the gubernatorial  
4 cohort blocks this motion, then I will make that motion.

5 Chair Varlack: Commissioner Yates?

6 Commissioner Yates: I am going to follow up on  
7 something that Monica Stamm and Commissioner Lavine were just  
8 talking about and that is, narrow in on exactly what  
9 information is going to be available and to whom, because it's  
10 important to me. I read section 19(a) of the Executive Law to  
11 say that, notwithstanding FOIL, the only records of the  
12 Commission which shall be available for public inspection and  
13 copying are, and then it itemizes them, so if this motion in  
14 anyway would lead to public inspection or copying of a record  
15 that is not listed there, then I would vote against it because  
16 I think it violates the Public, the Executive Officers Law,  
17 or the Executive Law rather. On the other hand, if what  
18 Commissioner Lavine's motion is, is merely that a person whose  
19 records are being sought can be notified that his or her  
20 records are being sought, and it's not available for public  
21 inspection or copying, and it will be information that's solely  
22 available to the subject of the inspection, then I could  
23 support the motion. So I really need clarification on that  
24 because I don't want us violating the Executive Law.

1 Commissioner Lavine: Madam Chair, a response to  
2 Judge Yates. You have articulated better than I would have the  
3 second omnibus motion that I will make once this motion is  
4 defeated, that's pending.

5 Chair Varlack: Okay, so let's move to vote on the  
6 motion that is currently on the floor. Deputy General Counsel  
7 Levine, can you repeat the motion please?

8 Martin Levine: Yes ma'am, to direct staff to  
9 disclose whether any requests for a Commissioner's financial  
10 disclosure statement have been made in the last three years by  
11 the Executive Chamber, someone reasonably affiliated with the  
12 Executive Chamber, or the Office of Inspector General.

13 Chair Varlack: All in favor?

14 Martin Levine: Please hold your hand up until I call  
15 your name. I see Commissioner Weissman and McNamara, let me  
16 record that. I'll call the remaining roll. Commissioner Braun?  
17 I didn't hear you, but I will come back to you. Commissioner  
18 Cohen?

19 Commissioner Cohen: No.

20 Commissioner Braun: I said no.

21 Martin Levine: Thank you, Judge. I heard you now.  
22 Commissioner Dering?

23 Commissioner Dering: No.

1           Martin Levine: Commissioner DiPirro?

2           Commissioner DiPirro: I would like to abstain. I  
3 have heard two different legal positions on this, and with the  
4 lack of background, I would like more information from staff.  
5 I just don't think it's appropriate for me to vote with two  
6 distinct determinations from a legal standpoint.

7           Martin Levine: Thank you. Commissioner Fisher?

8           Commissioner Fisher: No.

9           Martin Levine: Commissioner Horwitz?

10          Commissioner Horwitz: No.

11          Martin Levine: Commissioner Jacob?

12          Commissioner Jacob: Yes.

13          Martin Levine: Commissioner Lavine?

14          Commissioner Lavine: Yes.

15          Martin Levine: Judge McCarthy?

16          Commissioner McCarthy: Yes.

17          Martin Levine: Judge Yates?

18          Commissioner Yates: No.

19          Martin Levine: Chair Varlack?

20          Chair Varlack: No.

1           Martin Levine: 1, 2, 3, 4, 5 in favor, one abstention.

2           Motion fails.

3           Chair Varlack: Thank you.

4           Commissioner Lavine: At this juncture, Madam Chair,  
5 if you will indulge me, I now make the motion as expressed,  
6 outlined by Judge Yates.

7           Chair Varlack: Yes, please proceed, Commissioner  
8 Lavine. Are you making the new motion?

9           Commissioner Lavine: I'm making that motion, yes.

10          Chair Varlack: Okay, so Commissioner Yates, could  
11 you repeat the motion just so that we're clear on what the  
12 current motion is?

13          Commissioner Yates: Somehow this has become my  
14 motion? I will articulate Commissioner Lavine's motion.  
15 Commissioner Lavine's.

16          Commissioner Lavine: Why don't you move it and I  
17 will second, alright?

18          Commissioner Yates: I would move that any  
19 Commissioner can request from staff and be advised if a request  
20 to inspect their FDS was made by anybody in the Executive  
21 Chamber or connected with the Executive Chamber in the last  
22 three years.

23          Commissioner Lavine: Second the motion, Madam Chair.

1 Chair Varlack: Thank you.

2 Monica Stamm: I just, Commissioner Yates, what,  
3 maybe I missed something, isn't this the same as Commissioner  
4 Lavine's motion?

5 Commissioner Yates: No. The only difference is, this  
6 would not be publicly available or disclosed publicly in any  
7 way. It is merely advice between staff and that Commissioner,  
8 the requesting Commissioner.

9 Chair Varlack: Okay, so the motion has been made,  
10 properly seconded. Is there any discussion? Commissioner  
11 Dering?

12 Commissioner Dering: Just echoing some comments that  
13 Commissioner Fisher made before. I think that JCOPE  
14 Commissioners should be treated the same as the public. Thank  
15 you.

16 Chair Varlack: Thank you, Commissioner Dering. Any  
17 other comment before we move to a vote on the section option?  
18 Okay. I will add that I too believe that we should have a  
19 comprehensive approach to the these and there not be carveouts  
20 for Commissioners.

21 Commissioner Yates: I'd like to table my motion, in  
22 that case. I agree with you it should go to the confidentiality  
23 committee.

1           Chair Varlack: Thank you, Commissioner Yates. So at  
2 this point, we will, we will move on. Are there any other, yes,  
3 Commissioner Yates?

4           Commissioner Yates: I have a new motion if you don't  
5 mind, and I'll try and keep this brief. The Attorney General  
6 is authorized to issue opinions and advice to Commissions and  
7 Commissioners. They do so regularly. You can look up the  
8 opinions. You see their advice all the time. I would ask that,  
9 on behalf of the Commission, that we write a letter, within  
10 the week, to Attorney General Letitia James, and ask an opinion  
11 as to whether or not, if we receive a complaint of a violation  
12 of Public Officers Law 74 that is sworn and credible, if we  
13 have the authority to investigate it, notwithstanding  
14 Executive Order 202.6 and 202.7?

15           Chair Varlack: Okay. Is there a second?

16           Commissioner Lavine: Second.

17           Chair Varlack: Thank you. Opening the floor for  
18 comments and discussion. Okay. Seeing no hands, we can move to  
19 a vote. All in favor?

20           Martin Levine: Please raise your hand. I see  
21 Commissioner Yates, Commissioner McNamara, Commissioner  
22 Weissman, and Judge Braun. I will call the remaining roll.  
23 Commissioner Cohen?

24           Commissioner Cohen: No.



1 Martin Levine: Commissioner Dering?

2 Commissioner Dering: No.

3 Martin Levine: Commissioner DiPirro?

4 Commissioner DiPirro: No.

5 Martin Levine: Commissioner Fisher?

6 Commissioner Fisher: No.

7 Martin Levine: Commissioner Horwitz?

8 Commissioner Horwitz: No.

9 Martin Levine: Commissioner Jacob?

10 Commissioner Jacob: Yes.

11 Martin Levine: Commissioner Lavine?

12 Commissioner Lavine: Yes.

13 Martin Levine: Judge McCarthy?

14 Commissioner McCarthy: Yes.

15 Martin Levine: Chair Varlack?

16 Chair Varlack: No.

17 Martin Levine: 1, 2, 3, 4, 5, 6, 7 in favor. Motion

18 fails.

19 Chair Varlack: Are there any, is there anything else

20 under new and other business?

21 Commissioner Yates: This is the last thing I'll ask.

1           Commissioner Jacob: May I ask, may I just ask? I  
2 didn't hear the last statement of counsel, of, that Martin.  
3 Did that motion pass, or fail?

4           Martin Levine: The motion failed. Seven in favor.

5           Commissioner Jacob: Thank you, Martin.

6           Chair Varlack: Commissioner Yates?

7           Commissioner Yates: I'll be brief. This is maybe the  
8 sixth time in a row that I have raised this, but the fact that  
9 the senate democratic leadership refuses or fails or omits to  
10 follow the law which requires appointment of, filling of a  
11 vacancy within 30 days on this Commission means that we've  
12 gone without a representative by the Senate Democrats for  
13 almost two years. I just want to remind people that, by not  
14 following that law and appointing someone within 30 days,  
15 effectively the Senate Democrats are voting no on any  
16 investigation, so if someone comes forward with a sexual  
17 harassment complaint or with any other complaint that they may  
18 be reading about in the papers that's of interest to anybody,  
19 about conflicts of interests or malfeasance, whenever we take  
20 a vote on that, there is an absolute no vote by the Senate  
21 Democratic representative because that's what a vacancy is, is  
22 a no vote.

1           Chair Varlack: Is there any other new and other  
2 business? Okay. At this time can I please have a motion to  
3 move into Executive Session?

4           Commissioner Lavine: If I may, Madam Chair. I have  
5 some questions for staff. With respect, and I want to emphasize  
6 at the outset of this discussion, I am not addressing any  
7 particular opinion that they have previously rendered, but I  
8 want to understand, in generic terms, the application of  
9 opinions of the predecessor Commission, Commissions plural,  
10 the Commission on Public Integrity, and the Ethics Commission  
11 preceding the Commission on Public Integrity.

12           Chair Varlack: So, very quickly, Commissioner.

13           Commissioner Lavine: So, when the staff, I'm sorry  
14 Madam Chair?

15           Chair Varlack: I'm sorry, I didn't mean to interrupt  
16 you. I wanted to ask is there going to be a related motion to  
17 these questions?

18           Commissioner Lavine: No.

19           Chair Varlack: Okay. I'm sorry, please proceed.

20           Commissioner Lavine: Thank you. The predecessor  
21 Commissions, at least the predecessor Commission, the  
22 Commission on Ethics, has rendered opinions on various subjects.

1 Those are taken as precedent by staff when rendering opinions.

2 Do I understand that's the protocol?

3 Chair Varlack: I think that question would be for.

4 Monica Stamm: I'm sorry, Commissioner Lavine. I'm  
5 sorry, I didn't understand the question.

6 Commissioner Lavine: Well, maybe the question, maybe  
7 that's because I didn't put the question artfully. Opinions  
8 that are rendered by our predecessors, those, the statute says  
9 that they obtain unless we overrule those opinions, correct?

10 Monica Stamm: Correct.

11 Commissioner Lavine: Without getting into the  
12 arrangement for the Governor's book, it has been the case in  
13 the past that state employees have requested opinions from our  
14 predecessors on the subject of publishing books, pamphlets,  
15 manuals, and the like. Is that not the case?

16 Monica Stamm: Yes, that's the case.

17 Commissioner Lavine: When there have been, there  
18 have been various opinions on the subject of publishing  
19 rendered by the predecessor Ethics Commission, in '95, and '98,  
20 and '89. If there is a perceived conflict with respect to  
21 those opinions juxtaposed with each other, would that, under  
22 the current policy, then be deferred to the Commission to

1 decide what the precedent is, or does the staff make its own  
2 determination?

3           Monica Stamm: I'm not sure what you mean by a  
4 perceived conflict. We, if there isn't precedent that is in  
5 effect and on point and it raises a novel question, we would  
6 take it to the Commission. So either one, if it's raising a  
7 novel question, but I am not sure what you mean if there's a  
8 perceived conflict.

9           Commissioner Lavine: Well, let me take it out of the  
10 realm of the ethereal. 95-25 of the State Ethics Commission,  
11 Opinion 95-25 held that if a public officer were publishing on  
12 a matter that the public officer was involved with, which was  
13 within the ambit of their current duties and responsibilities,  
14 the royalties could not be gleaned from the publication. There  
15 was further opinions, 98-15 and 98-16, which could be construed  
16 to reach different conclusions from 95-25, so my question is  
17 when staff has to address that kind of a juxtaposition, would  
18 it normally be deferred to the Commission or would the staff  
19 resolve the differences?

20           Monica Stamm: So, my understanding, but Michael  
21 Sande, the Deputy Director of Ethics Guidance is on the call  
22 and he can confirm this, it might be better to put the questions  
23 about the specifics of the Advisory Opinions, but my  
24 understanding is it's not a juxtaposition but that 98-15

1 clarifies the rules, the precedent, and then it very clearly  
2 says to the extent that the prior decision is inconsistent  
3 it's overruled, but that's what I think, but again Mike Sande  
4 can jump in here. I don't know that it's a juxtaposition or  
5 a conflict. More recent precedent that deals with the question  
6 and comes to a different conclusion, I think it overturns the  
7 precedent with respect to one point, but Michael, you might be  
8 muted. Hold on. I'm sorry. I'm looking at the Advisory Opinion  
9 right now.

10 Michael Sande: Monica, can you hear me?

11 Monica Stamm: Now we can, yeah. I'm just trying to  
12 find the language. I thought that there was language in the  
13 more recent Advisory Opinion, 98, which is very clear about  
14 its effects.

15 Commissioner Weissman: Monica?

16 Monica Stamm: Yeah.

17 Commissioner Weissman: This is George. Let me read  
18 you the language that modified 95-25. The prohibition arises  
19 only when the job relatedness of a published work is used to  
20 demonstrate that it is part of the employee's job duties.  
21 That's the only thing left of 95-25.

22 Monica Stamm: Right, so again, I don't think there's  
23 a juxtaposition or conflict. I think that 98-15 addressed this  
24 question more recently and resolved it. But I thought there

1 was more explicit language, I just don't know. Michael, do you  
2 know?

3 Michael Sande: Monica, can you hear me?

4 Monica Stamm: Yes.

5 Michael Sande: Yes, that language is in the opinion  
6 and I'm looking for it now, I have the opinion printed out.

7 Chair Varlack: Okay, so Commissioner Lavine, I know  
8 you had some questions for staff and I don't know if there is  
9 a motion related to it, but I will note that we do have quite  
10 a bit of business to continue on. Did you have any other  
11 questions related to this?

12 Commissioner Weissman: Madam Chair?

13 Chair Varlack: Yes, Commissioner Weissman.

14 Commissioner Weissman: Could we, there is a short  
15 paragraph in 98-16 that maybe Michael Sande can read which  
16 clears up the language from 98-15, but it's short and it won't  
17 take him more than a minute.

18 Commissioner Cohen: Madam Chair, this is Rob Cohen.  
19 Can I just be heard for a brief moment? I am just scratching  
20 my head kind of wondering what we're doing here. We are reading  
21 opinions and people are making interpretations seemingly on  
22 this. Not staff, making their own interpretations, some of  
23 them would seem to be on the fly. I just don't understand what

1 benefit anyone is deriving from this here, and if the  
2 discussion does merit some other, if this topic does merit  
3 further discussion, then it is precisely the type of issue  
4 that should be raised beforehand, circulated beforehand,  
5 people can muse over it, cogitate over it, and then have an  
6 informed discussion. But right now, there is vast moments of  
7 silence where people are reading opinions and excerpts thereof,  
8 and it just seems a complete and utter waste of time. That's  
9 my two cents.

10 Chair Varlack: Thank you, Commissioner Cohen. So,  
11 Commissioner Lavine, I know I asked you this at the beginning  
12 of this particular point. Is there, do you intend to make a  
13 motion at this time? If not, my inclination would be, it would  
14 seem as though there is something here that you want to discuss.  
15 The opinions that are being cited, while General Counsel Stamm  
16 is looking for some, I think Michael as well, certainly the  
17 rest of the Commissioners, I certainly don't have these  
18 opinions, and I would like to keep moving with the meeting  
19 because, again, we have a lot of business to discuss. So my  
20 question would be is there a motion that you intend to make?  
21 I'm not sure if we lost him.

22 Commissioner Lavine: Thank you very much, Madam Chair.  
23 I certainly want to accommodate you if I can. I will exit this  
24 subject today, with the nub of my inquiry. It appears to me,  
25 can you hear me, Madam Chair?



1 Chair Varlack: Yes, we can hear you.

2 Commissioner Lavine: It appears to me that there is  
3 a lack of clarity in how several of these opinions should be  
4 read together and what conclusions should be drawn. Now what  
5 I want to note is, given the fact that 98-15 changed the '95  
6 opinion, and then 98-16 changed 98-15, I would like to hear  
7 from staff how they reconcile the differing opinions, and  
8 whether it is their prerogative to do that or the Commission's.  
9 And I will certainly be happy to hear it at the next meeting.

10 Chair Varlack: Thank you very much, Commissioner  
11 Lavine. I appreciate it. At this time, can I please have motion  
12 to move into Executive Session pursuant to Executive Law  
13 94(19)(b)?

14 Commissioner Dering: I'll move. Dering.

15 Chair Varlack: Thank you, Commissioner Dering. can  
16 I have a second?

17 Commissioner Fisher: I'll second. Fisher.

18 Chair Varlack: Thank you.

19 Commissioner Cohen: Chris ,I'm going to go move the  
20 car. Yeah, I'm going to go move it, Dexter. Okay, Chris I'm  
21 going. (inaudible).

22 Commissioner Varlack: Walt, are we in Executive  
23 Session?

1           Monica Stamm: Walt, can you mute Commissioner Cohen  
2 for a moment?

3

4           Walter McClure: We haven't taken, we didn't take a vote. Hold  
5 on. Let me mute him. I'm sorry.

6           Chair Varlack: Oh, sorry.

7           Walter McClure: Yes, go ahead. I did mute  
8 Commissioner Cohen at the moment.

9           Chair Varlack: Thank you. All in favor of moving to  
10 Executive Session.

11           Martin Levine: Thank you. I see Commissioner Yates,  
12 Fisher, Dering, McNamara, Weissman, Braun and the Chair.  
13 Commissioner Cohen I know is indisposed. I'll come back to him.  
14 Commissioner DiPirro?

15           Commissioner DiPirro: Yes.

16           Martin Levine: Commissioner Fisher voted.  
17 Commissioner Horwitz?

18           Commissioner Horwitz: Yes.

19           Martin Levine: Commissioner Jacob?

20           Commissioner Jacob: Yes.

21           Martin Levine: Commissioner Lavine?

22           Commissioner Lavine: Yes.

1 Martin Levine: Judge McCarthy?

2 Commissioner McCarthy: Yes.

3 Martin Levine: I'll come back. Commissioner Cohen,  
4 are you there? No. Okay twelve in favor.

5 Monica Stamm: He's muted, wait, Commissioner Cohen  
6 is muted. Walt, you have to take him off mute.

7 Walter McClure: I tried to. It's not letting me  
8 unmute him. It sends a request to tell him to unmute so it's  
9 not, he has to unmute himself.

10 Martin Levine: I don't think he would object if we  
11 went forward but if he does, we can revisit the motion after  
12 the Public Session.

13 Monica Stamm: It carried.

14 Martin Levine: Twelve in favor. We're out.

15 Walter McClure: Stand by please.

16 Chair Varlack: Thank you.

17 [The Commission went into Executive Session]

18 [The Commission returned to Public Session]

19 Walter McClure: Madam Chair, we're back in Public  
20 Session.

21 Chair Varlack: Thank you very much. General Counsel  
22 Stamm, can you please report on our Executive Session?

1           Monica Stamm:     Sure. The Commission discussed  
2 personnel matters, approved two settlement agreements,  
3 commenced one substantial basis investigation, and authorized  
4 steps in several investigative matters, closed one matter, and  
5 discussed several other investigative matters.

6           Chair Varlack: Thank you. Is there any other business  
7 before the Commission? Okay, seeing no hands, hearing nothing,  
8 I will note the next Commission meeting is scheduled for April  
9 27<sup>th</sup>. May I have a motion to adjourn the meeting?

10           Commissioner Dering: So moved. Dering.

11           Commissioner DiPirro: Second. DiPirro.

12           Chair Varlack: Thank you, Martin. Do you have the  
13 motion and the second, Deputy General Counsel Levine?

14           Martin Levine: Yes, Chair.

15           Chair Varlack: Thank you, All in favor?

16           Martin Levine: Dering, Fisher, McNamara, Braun,  
17 Weissman, Cohen?

18           Commissioner Cohen: Yes.

19           Martin Levine: DiPirro?

20           Commissioner DePirro: Yes.

21           Martin Levine: Jacob?

22           Commissioner Jacob: Yes.

1           Martin Levine: Lavine?

2           Commissioner Lavine: Yes.

3           Martin Levine: McCarthy?

4           Commissioner McCarthy: Yes.

5           Martin Levine: Motion carries.

6           Chair Varlack: Thank you. Have a good day.

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