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IN THE MATTER OF INDEPENDENT  
INVESTIGATION UNDER  
EXECUTIVE LAW 63(8)  
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REMOTE PROCEEDINGS  
MICHAEL VOLFORTE  
WEDNESDAY, JULY 7, 2021  
10:50 A.M.

Reference No.: 4692851  
Reported By: Rita Persichetty

1 A P P E A R A N C E S: (All remote)

2

3 VLADECK, RASKIN & CLARK, PC

4 Attorneys for New York State Attorney

5 General's Office

6 565 Fifth Avenue

7 New York, New York 10017

8 BY: YANNICK GRANT, ESQ.

9 - and -

10 EZRA CUKOR, ESQ.

11 PHONE: 212.403.7300

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13

14 CLEARY GOTTlieb STEEN & HAMILTON

15 Attorneys for New York State Attorney

16 General's Office

17 One Liberty Plaza

18 New York, New York 10006

19 BY: JOON H. KIM, ESQ.

20

21

22 ALSO PRESENT: ERIC FISHER, Videographer

23

24

25

## P R O C E E D I N G S

1  
2 THE VIDEOGRAPHER: So due to the  
3 severity of COVID-19 and following the  
4 practice of social distancing, I, the  
5 videographer, will not be in the same room  
6 as the witness or any of the other  
7 participants. Instead I'll be recording  
8 remotely, and the court reporter will be  
9 swearing the witness in from -- remotely as  
10 well.

11 So good morning. We are going on the  
12 record at 10:47 a.m. on Wednesday, July 7,  
13 2021. This is media unit one for the video  
14 recorded deposition of Michael Volforte in  
15 the matter of Independent Investigation  
16 under New York State executive law section  
17 63(8) versus New York.

18 This deposition is being held via  
19 remote video stream. My name is Eric  
20 Fisher from the firm Veritext New York and  
21 I'm the videographer. The court reporter  
22 is Rita Persichetty from the firm Veritext  
23 New York. All appearances have been noted  
24 for the stenographic record so when the  
25 court reporter is ready she may swear in

1 the witness.

2 THE COURT REPORTER: The attorneys  
3 participating in this deposition  
4 acknowledge that I am not physically  
5 present in the deposition room and that I  
6 will be reporting this deposition remotely.  
7 They further acknowledge that, in lieu of  
8 an oath administered in person, the witness  
9 will verbally declare his testimony in this  
10 matter is under penalty of perjury. The  
11 parties and their counsel consent to this  
12 arrangement and waive any objections to  
13 this manner of reporting. Please indicate  
14 your agreement by stating your name and  
15 your agreement on the record.

16 MR. GRANT: I agree. My name is  
17 Yannick Grant of the law firm Vladeck  
18 Raskin & Clark. And I'll let my colleagues  
19 introduce themselves.

20 MR. CUKOR: My name is Ezra Cukor and  
21 I am also from the law firm of Vladeck  
22 Raskin & Clark.

23 MR. GRANT: And we will also be joined  
24 today intermittently by Joon Kim of the law  
25 firm Cleary Gottlieb Steen & Hamilton.

1 M I C H A E L V O L F O R T E ,

2 called as a witness, having been sworn  
3 by the Notary Public, was examined and  
4 testified as follows:

5 EXAMINATION BY

6 MR. GRANT:

7 Q. Good morning, Mr. Volforte. And am I  
8 saying your last name correctly?

9 A. It's Volforte, but it's all right.  
10 Volforte, Volforte, it's -- it's okay either  
11 way.

12 Q. Gotcha. Thank you for meeting with us  
13 today. As I said earlier my name is Yannick  
14 Grant. I'm a partner at the law firm Vladeck  
15 Raskin & Clark. My colleagues have already  
16 introduced themselves. Today I'm here in my  
17 capacity as a special deputy to the first deputy  
18 of the New York State Attorney General.

19 As, you know, the attorney -- the New  
20 York Attorney General has appointed Cleary  
21 Gottlieb as well as Vladeck Raskin & Clark to  
22 conduct an independent investigation under New  
23 York executive law section 63(8) into  
24 allegations of sexual harassment brought against  
25 Governor Andrew Cuomo as well as the surrounding

1 circumstances.

2 You are here today pursuant to a  
3 subpoena issued in connection with this  
4 investigation.

5 I'll note at the onset today, as  
6 you've likely recognized, that this testimony is  
7 being video recorded. You are under oath. That  
8 means you must testify fully and truthfully just  
9 as -- just as you would in a court of law and  
10 before a judge and a jury. Your testimony is  
11 subject to a penalty of perjury.

12 So do you understand?

13 A. I do.

14 Q. Okay. If you would like to make a  
15 brief sworn statement we ask that you do so at  
16 the conclusion of the examination today.

17 Do you understand?

18 A. Yes.

19 Q. Great. Although this is a civil  
20 investigation, the attorney general's office  
21 does have criminal enforcement powers. You have  
22 the right to refuse to answer a question if  
23 answering the question would incriminate you.  
24 However, your failure to answer a question can  
25 be used against you in a court of law in a civil

1 noncriminal proceeding.

2 Do you understand?

3 A. I do.

4 Q. Accordingly, asserting your Fifth  
5 Amendment privilege does have evidentiary  
6 significance. If you choose to assert your  
7 Fifth Amendment privilege, the fact that could  
8 be presented -- that fact would be presented to  
9 a judge or a jury in a civil proceeding and they  
10 would be free to draw a conclusion from your  
11 assertion of the Fifth Amendment privilege.

12 Do you understand?

13 A. I do.

14 Q. Okay. As you know, we have a court  
15 reporter present with us on this -- in the  
16 virtual room, so the court reporter, Rita, will  
17 need to be taking down my questions as well as  
18 your answers to create a clean transcript. To  
19 that end, I'm going to ask that you wait until I  
20 finish my question before you give a response.

21 Do you understand?

22 A. I do.

23 Q. On the same line, even if you nod your  
24 head or, you know, indicate approval physically,  
25 you still need to answer yes or no. Understood?

1           A.     I do.

2           Q.     Okay.  If you do not understand the  
3 question, please let me know and I will rephrase  
4 it.  Understood?

5           A.     Yes.

6           Q.     If you don't ask me I will assume you  
7 understood the question as asked.  All right?

8           A.     Yes.

9           Q.     Great.  Today I will be asking you  
10 certain questions about specific dates and  
11 information.  I ask that even if I ask a  
12 specific question and you don't have a specific  
13 recollection that you provide an answer to your  
14 general recollection of the situation and your  
15 recollection of approximate dates and times.

16                   Do you understand?

17           A.     Yes.

18           Q.     Okay.  If you need to take a break at  
19 any point please let me know.  However, I will  
20 ask that if a question is pending that you  
21 provide me an answer to that question before we  
22 take a break.  Understood?

23           A.     Yes.

24           Q.     You're here without an attorney today  
25 but can you confirm that you are not recording

1 this proceeding in any way?

2 A. I am not recording this proceeding in  
3 any way.

4 Q. Thank you very much.

5 And please confirm that you will not  
6 communicate in real time with anyone about the  
7 substance of your testimony here today?

8 A. I will not be communicating with  
9 anyone in real time about the substance of my  
10 testimony.

11 Q. Executive law 63(8), the provision  
12 under which this investigation is being  
13 conducted, prohibits you or any counsel you may  
14 have from revealing anything that we ask you or  
15 what we say during your testimony to anyone  
16 before or after this testimony. Understood?

17 A. Understood.

18 Q. If anyone asks that you disclose any  
19 such information, please let us know, including  
20 any reason they provide for seeking such  
21 information and we will discuss with you any  
22 disclosure that would be permitted. Understood?

23 A. Understood.

24 Q. Are you taking any medications or have  
25 you taken any medications or drugs recently that

1 would affect your ability to testify truthfully  
2 today?

3 A. No.

4 Q. Have you had any alcohol recently that  
5 would impair your ability to testify truthfully  
6 and fully today?

7 A. No.

8 Q. Is there any other reason you may know  
9 of that would interfere with your ability to  
10 testify?

11 A. No.

12 Q. Could you please state your name for  
13 the record as well as your current business  
14 address?

15 A. Sure. My name is Michael Volforte,  
16 V-O-L-F-O-R-T-E, and my current business address  
17 is Two Empire State Plaza, [REDACTED] Albany,  
18 New York 12223.

19 Q. Great. Have you ever testified in a  
20 proceeding before?

21 A. Yes.

22 Q. How many times?

23 A. Approximately three times in  
24 depositions.

25 Q. Do you recall the subject matter of

1 those cases?

2 A. Yes.

3 Q. What were they about?

4 A. I testified twice in depositions  
5 regarding union challenges to changes in health  
6 insurance premiums, and I was deposed one time  
7 in a manner -- sorry, in a matter that a former  
8 employee sued the Department of Environmental  
9 Conservation.

10 Q. What were the grounds of the former  
11 employee's suit?

12 A. I believe it was a retaliatory  
13 discharge.

14 Q. Based on what sort of complaint?

15 A. The complaint was there was a prior  
16 lawsuit involving that individual and an  
17 individual that was associated with that  
18 company, and that was a -- wound up in  
19 litigation with the Office of General Services,  
20 which I was not involved, it was not a permit  
21 for a food truck.

22 And then later on that -- she worked  
23 for the state as well as being associated with  
24 that food truck, and she was let go from a  
25 probationary position at the Department of

1 Environmental Conservation and sued. And I  
2 think one of the grounds may have been  
3 retaliation for whatever was being sought in  
4 that first lawsuit against OGS.

5 Q. Meaning she alleged that she was  
6 retaliated against based on testimony she  
7 provided in connection with that prior  
8 proceeding?

9 A. No.

10 Q. Okay. Sorry, if I got that wrong.  
11 Could you explain -- so what sort of  
12 retaliation, meaning what did she provide that  
13 she was being --

14 A. I -- I believe it was. I wasn't  
15 involved in the first lawsuit, but I think they  
16 were -- I think there were allegations because  
17 the first lawsuit involved first amendment  
18 concerns regarding the name of her food -- of  
19 the food truck she was associated with. I don't  
20 remember the exact business relationship. I  
21 think those were some of the issues raised in  
22 the second litigation about her discharge.

23 Q. Okay. And have you ever testified at  
24 a trial?

25 A. Not a court trial but in a

1 arbitration.

2 Q. Gotcha. And what was the subject  
3 matter of that arbitration?

4 A. I've testified numerous times, mostly  
5 contract interpretation issues of our collective  
6 bargaining agreements, and a few times in  
7 arbitration proceedings regarding compensation  
8 and benefit levels that my agency is involved in  
9 as a result of negotiations.

10 Q. So the arbitrations you've testified  
11 in all relate to collective bargaining disputes?

12 A. Yes.

13 Q. Okay. How did you prepare for today's  
14 testimony?

15 A. I didn't.

16 Q. You did not prepare at all?

17 A. No.

18 Q. Did you review any documents?

19 A. No.

20 Q. Did you speak to anyone else about you  
21 testifying here today?

22 A. No.

23 Q. Okay. And outside the context of  
24 preparation for this testimony did you speak  
25 with anybody about speaking with the

1       investigative team at any point?

2           A.     Yes.

3           Q.     With whom did you speak?

4           A.     I spoke to [REDACTED] and [REDACTED]  
5       [REDACTED] of my staff and informed them that I  
6       had been subpoenaed for testimony. I also  
7       informed Beth Garvey, counsel to the Governor,  
8       that I had been subpoenaed for testimony. And  
9       those are the people I spoke to.

10          Q.     Okay. When did you speak to  
11       [REDACTED] and [REDACTED] ?

12          A.     Immediately after the subpoena was  
13       first issued for my testimony, within a day or  
14       two, and I spoke to them last week when it was  
15       confirmed that I would be testifying today. And  
16       I spoke to Ms. Garvey I believe last week as  
17       well.

18          Q.     And so you spoke to Ms. Garvey last  
19       week?

20          A.     Yes.

21          Q.     Okay. Do you recall what you told  
22       Ms. Garvey?

23          A.     I told her I was subpoenaed to testify  
24       as a witness and that I anticipated that  
25       happening this week.

1 Q. And what did Ms. Garvey say in  
2 response?

3 A. She thanked me for letting her know  
4 and that was it, that I recall.

5 Q. Have you spoken with anyone about  
6 testimony they've given the investigative team?

7 A. No.

8 Q. Have you spoken to anybody about this  
9 investigation generally?

10 A. Generally, yes.

11 Q. With whom have you spoken?

12 A. I spoke to Mitra Hormozi who is  
13 representing the executive chamber and I believe  
14 folks in the executive chamber, and with one of  
15 her associates or people she's associated with  
16 on at least one other -- one other occasion  
17 other than a conversation with Ms. Hormozi.

18 Q. Okay. And when was this conversation  
19 with Ms. Hormozi?

20 A. I don't recall an exact date of it. I  
21 believe the first conversation with Ms. Hormozi  
22 was in May, and then I think there was a  
23 follow-up additional conversation in June.

24 Q. Gotcha. And what was the subject  
25 matter of your conversation with Ms. Hormozi?

1           A.     The subject matter of the conversation  
2 was two conversations that had occurred with  
3 individuals in the executive chamber regarding  
4 attorney/client privilege regarding those  
5 conversations.

6           Q.     Okay. And who were those  
7 conversations with, the ones that they're  
8 asserting privilege over?

9           A.     There was a December 2020 conversation  
10 with Judy Mogul and Linda Lacewell, and then a  
11 March 2021 conversation with Ms. Lacewell.

12          Q.     Sorry, March 2021?

13          A.     Correct.

14          Q.     Okay. Could you turn to Tab 1 in your  
15 binder?

16                   (Exhibit 1, Subpoena, marked for  
17 identification.)

18          A.     Okay. You want me --

19          Q.     Oh. Yeah, open it up.

20          A.     I figured it was safe now but I wanted  
21 to wait in case there was a specific  
22 instruction.

23          Q.     No, it's fine.

24          A.     Going to show incompetence in knot  
25 untying here.

1 Q. Had to pay attention in Boy Scouts.  
2 Take your time to review it and let me  
3 know when you're ready.

4 A. I'm ready.

5 Q. All right. And is that -- do you  
6 recognize this document?

7 A. Yes.

8 Q. Is this the subpoena that you received  
9 from our office?

10 A. Yes.

11 Q. And you read this subpoena completely,  
12 correct?

13 A. Correct.

14 Q. And you understand that your testimony  
15 here today is being taken pursuant to the  
16 authority under the subpoena, correct?

17 A. Correct.

18 Q. Great. Could you turn to Tab 2.

19 (Exhibit 2, Subpoena, marked for  
20 identification.)

21 Q. Please take a moment to review it and  
22 let me know when you're ready.

23 A. I'm ready.

24 Q. Okay. Do you recognize this document?

25 A. Yes.

1 Q. And is this document a subpoena that  
2 we issued to the Governors Office of Employee  
3 Relations --

4 MR. GRANT: Which for the court  
5 reporter I note I will call GOER, G-O-E-R,  
6 throughout the testimony today.

7 Q. -- that we sent to GOER?

8 A. Yes.

9 Q. Okay. And did you read the subpoena  
10 completely?

11 A. At the time of receipt, in response to  
12 the subpoena, yes.

13 Q. And were you the person who gathered  
14 the documents that were produced in accordance  
15 with the subpoena?

16 A. I was one of those individuals.

17 Q. Who was the other person?

18 A. The -- [REDACTED] and [REDACTED]  
19 [REDACTED] from my staff. That's  
20 [REDACTED].

21 Q. Other than the documents you've  
22 already provided -- or GOER has already provided  
23 to us, have either you, [REDACTED] or [REDACTED] -- or to  
24 the extent you know has -- I'll break up the  
25 question.

1           So besides the documents that have  
2 already been produced by GOER, have you  
3 encountered any additional responsive documents  
4 to the subpoena that have not yet been produced?

5           A.    I believe [REDACTED] has been in --  
6 yes.   And I believe [REDACTED] has been in  
7 communication with Ms. Mainoo -- is that -- I  
8 want to -- if I'm butchering her name, regarding  
9 additional potential disclosures based on a  
10 clarification we received from the special  
11 investigators.

12          Q.    Okay.   And are you aware -- besides  
13 the documents that you just mentioned that will  
14 be produced in response to a clarification, are  
15 you aware personally or has [REDACTED] or [REDACTED] told  
16 you of any other documents that exist responsive  
17 to our subpoena that have not yet been produced?

18          A.    No.    Just things in process that  
19 we're -- that we're evaluating, yes.

20          Q.    Gotcha.   And do you intend to provide  
21 us with an affidavit of compliance after  
22 completing your production?

23          A.    Yes.

24          Q.    Great.   All right.   Taking a step  
25 back.   Besides the conversations you may have

1 had about the investigation, have you spoken to  
2 anyone about the sexual harassment allegations  
3 that that have been made against Governor Cuomo?

4 A. Yes.

5 Q. With whom have you spoken?

6 A. I have spoken with Ms. Garvey and  
7 Ms. Mogul.

8 Q. Anyone else?

9 A. No.

10 Q. And when did you speak with Ms. Garvey  
11 about the sexual harassment allegations?

12 A. I spoke with Ms. Garvey in connection  
13 with the first complaint GOER received that we  
14 turned over to the investigators from the  
15 attorney general in March of 2021 I believe.  
16 That was also a conversation that involved  
17 Ms. Mogul.

18 And then I spoke with Ms. Garvey again  
19 regarding the second complaint that Ms. Garvey  
20 filed with GOER that we have disclosed to the  
21 attorney general in April of 2021.

22 Q. Okay. And when did you have  
23 conversations with Ms. Mogul about sexual  
24 harassment allegations against the governor?

25 A. I had a conversation with Ms. Mogul

1 regarding the March 2021 complaint that GOER  
2 turned over.

3 Q. And am I correct that that was a  
4 complaint -- those were complaints -- meaning  
5 the March complaint and the April complaint were  
6 complaints concerning Brittany Commisso and  
7 Alyssa McGrath?

8 A. Yes, I believe you're correct with  
9 those names.

10 Q. Thank you. Could you describe your  
11 educational history following high school?

12 A. Sure. I'm a 1992 graduate of  
13 St. Lawrence University, and a 1996 graduate of  
14 Albany Law School.

15 Q. Great. What did you do that year --  
16 am I correct that there was a year between you  
17 attending -- completing college and attending  
18 law school?

19 A. You are correct.

20 Q. And what did you do during that year?

21 A. I worked with my father in his  
22 business.

23 Q. Gotcha. What sort of business?

24 A. Flooring installation.

25 Q. All right. And after graduating from

1 law school what did you do?

2 A. After graduating from law school I  
3 started to work here at GOER.

4 Q. Have you worked anywhere besides GOER?

5 A. In a capacity as a -- as a lawyer, no.

6 Q. Have you worked anywhere in the  
7 capacity other than being a lawyer?

8 A. Yes.

9 Q. Where have you worked?

10 A. In addition to working for my father's  
11 business, in law school I was employed by the  
12 University doing tech work during my first or  
13 second year. I was employed as a law clerk by  
14 the New York State Bar Association, and I was  
15 also employed as a law clerk by the Civil  
16 Service Employees Association. It's a union  
17 that represents public sector employees and  
18 their central office is here in Albany.

19 Q. Gotcha. When did you hold each of  
20 those positions?

21 A. First year of law school, so that  
22 would have been the summer of 1994 for the law  
23 school. The Bar Association would have been  
24 '94, '95. And I believe my CSEA, Civil Service  
25 Employees Association, employment was 1996.

1 Q. Any other -- since graduating from law  
2 school, any other employment you've had in any  
3 capacity either as a lawyer or not as a lawyer?

4 A. No.

5 Q. Okay. So what was your first job at  
6 GOER?

7 A. I was hired as an assistant counsel.

8 Q. And how long were you an assistant  
9 counsel?

10 A. I was an assistant counsel until 2002.

11 Q. So am I correct, is that from 1996 to  
12 2002?

13 A. Yes, October 1996 through 2002.

14 Q. Okay. And what were your duties in  
15 connection with being an assistant counsel?

16 A. I was assigned grievance and  
17 arbitration cases and improper practice charges  
18 and would represent state agencies in those  
19 proceedings when -- where the union would be on  
20 one side and the state agency would be on the  
21 other, and I would also serve on -- as counsel  
22 to negotiating teams as well. So those were my  
23 primary duties during those years.

24 Q. Did you represent particular state  
25 agencies or any state agency?

1           A.     Could be any state agency.

2           Q.     And after 2002 how did your job change  
3 or what was your new title?

4           A.     In 2002 I -- the individual who was  
5 the chief negotiator for collective bargaining  
6 for the state police units retired, and in 2002  
7 those duties were -- were added to my position.  
8 And in 2003 I became associate director. So  
9 basically I had my duties amended to not only  
10 include what I was doing before but the new  
11 duties of being the chief negotiator for those  
12 collective bargaining agreements.

13          Q.     Gotcha. And what are your duties in  
14 connection with being the chief negotiator for  
15 the collective bargaining agreements?

16          A.     Two main duties. When the contract is  
17 opened you go to the bargaining table and you  
18 are the state's chief spokesperson in terms of  
19 achieving a new agreement. When a new agreement  
20 is signed you're the -- basically the signatory  
21 to that agreement on behalf of the director.  
22 And after it's negotiated you're in charge of  
23 implementing all the changes in the collective  
24 bargaining agreement.

25          Q.     Okay. So you said there were two.

1 Did you testify to both of them? Sorry. I  
2 thought it sounded like an answer to just one  
3 duty.

4 A. Two -- I'm sorry. Could you repeat  
5 that, Yannick?

6 Q. Sorry. I thought you said that there  
7 were two main duties you had in connection with  
8 being the chief negotiator. Did you testify to  
9 both of those duties?

10 A. I did, yes. The pre and the post --

11 Q. Gotcha.

12 A. The pre agreement and the post  
13 agreement are two different sets of duties.

14 Q. Gotcha. And in terms of negotiating  
15 these bargaining agreements, who's providing you  
16 guidance as to what the state's position would  
17 be or do you come up with the state's position  
18 independently?

19 A. It would -- it would depend on what  
20 the position would be. It would be -- you know,  
21 if it was monetary or of a global state  
22 perspective that would have come through either  
23 the deputy director of GOER -- of GOER or the  
24 actual director of GOER. If it was an agency  
25 specific issue it would have been done in

1 consultation with the superintendent of state  
2 police and his deputy superintendent for  
3 employee relations.

4 Q. Gotcha. And how long were you  
5 associate director?

6 A. I'm sorry?

7 Q. How long -- so while you were  
8 associate director, how -- did your duties  
9 change at all during that time, other than what  
10 you've just testified to?

11 A. No, I stayed basically working in  
12 counsel's office and doing those negotiations  
13 as -- as a new position.

14 Q. Gotcha. And are you, did you get a  
15 new title sometime after 2003?

16 A. In 2003 I got that new title. I think  
17 it was towards the end of 2003.

18 Q. Gotcha. And then afterwards did you  
19 get any other new titles at GOER?

20 A. In 2008 I was promoted to deputy  
21 counsel.

22 Q. Okay. And how did your duties change  
23 when you were promoted to deputy counsel?

24 A. I no longer did a lot of individual  
25 cases but was more of a resource for the then

1 members of counsel's office, but I kept my  
2 negotiating duties with that promotion.

3 Q. And when you say resources for members  
4 of counsel office, that's counsel within GOER,  
5 correct?

6 A. Correct.

7 Q. Okay. And how long were you deputy  
8 counsel?

9 A. I was deputy counsel from 2008 until  
10 2017, but my -- that's my civil -- was my civil  
11 service title. But my functional duties changed  
12 even though I didn't change titles.

13 Q. Am I correct then that you still, with  
14 respect to your civil service title, is -- are  
15 still deputy counsel?

16 A. No, I'm actually director of GOER.

17 Q. Okay. Sorry for the confusion there.  
18 So when did you become director?

19 A. I became interim director in May of  
20 2013 and was formally appointed as director in  
21 February of 2017.

22 Q. Okay. Did your duties change in  
23 connection with being named interim director?

24 A. Yes.

25 Q. How did they change?

1           A.     In addition to being the acting  
2 general counsel I took over day-to-day oversight  
3 over all of the operations of GOER.

4           Q.     And what were those operations as of  
5 2013?

6           A.     So basically GOER, at that time,  
7 was -- is -- could be considered as having two  
8 major functions.  There's the negotiations and  
9 implementation of collective bargaining  
10 agreements, that's one function.  And in  
11 addition to that, there's another set of  
12 functions which are called labor management  
13 committees.  They are how we implement certain  
14 negotiated benefits like pre-tax programs,  
15 tuition benefits, and just general labor  
16 management cooperative activities.

17                     So as a result of becoming interim  
18 director, all of those underlying duties that  
19 the agency performed would ultimately report up  
20 through me and I was ultimately responsible for  
21 it.

22           Q.     Gotcha.  And you served as interim  
23 director from 2013 until 2017?

24           A.     Correct.

25           Q.     And how did it come -- how did your

1 promotion to director come about?

2 A. I remember a call with the then deputy  
3 secretary for labor and work force, [REDACTED]  
4 [REDACTED], and she asked me why I was  
5 interim director. And we talked about how I was  
6 just never pushed. I never -- I never pushed or  
7 we never talked about becoming actual director.  
8 And then in February or late January I think of  
9 2017 I was told I was going to be appointed  
10 formally as director of GOER.

11 Q. And who appointed you?

12 A. I'm appointed by the Governor, but I  
13 believe the letter is signed by the secretary to  
14 the Governor.

15 Q. Ultimately it's with the Governor's  
16 approval that you hold the title of director,  
17 correct?

18 A. Correct.

19 Q. Okay. And you noted that you had  
20 never pushed to become director, correct?

21 A. Correct.

22 Q. Were there particular actions you took  
23 after having this conversation with [REDACTED]  
24 [REDACTED] and when -- the time you were appointed  
25 director?

1 A. No.

2 Q. No actions, was just a conversation  
3 with [REDACTED] ?

4 A. Just a conversation with her, and I  
5 believe she had conversations with others, which  
6 probably ultimately led to my appointment.

7 Q. Gotcha. And how did your duties  
8 change after being named director of GOER?

9 A. Practically they didn't change. It  
10 was the same as being interim director.

11 Q. Gotcha. As director of GOER do you  
12 report to anyone?

13 A. Generally I report to the deputy  
14 secretary for labor in the executive chamber.

15 Q. And who is that?

16 A. Currently it's [REDACTED].

17 Q. And who was it before [REDACTED] ?

18 A. Before it was [REDACTED] there was an  
19 interim individual [REDACTED]. I don't know  
20 that he was formerly the deputy secretary for  
21 labor, but he had those duties. I think he had  
22 other duties and took over those duties upon  
23 [REDACTED] leaving. Before [REDACTED] [sic] it  
24 was [REDACTED]. And before [REDACTED], GOER  
25 reported to Alphonso David when he was deputy

1 secretary for civil rights, which was before he  
2 was counsel to the Governor.

3 Q. Okay. So am I correct that in  
4 connection -- that since the time you've become  
5 director of GOER you've reported to [REDACTED],  
6 [REDACTED] and [REDACTED]?

7 A. And Mr. David in 2013 until the time  
8 he become counsel to the governor.

9 Q. Gotcha. When you were serving as the  
10 interim director of GOER?

11 A. Correct.

12 Q. Gotcha. And how many direct reports  
13 do you have?

14 A. Eleven.

15 Q. And what are their names?

16 A. Now my math is going to have to be  
17 right. I'm going to go down --

18 Q. It doesn't have to be right.

19 A. [REDACTED] (phonetic).

20 Q. Okay.

21 A. [REDACTED] (phonetic).

22 Q. And with each could you also tell us  
23 what their -- that person's title is?

24 A. Sure. [REDACTED] is deputy director of  
25 GOER. [REDACTED] is an assistant director of

1 GOER. [REDACTED], is also an assistant  
2 director of GOER. [REDACTED] (phonetic), an  
3 assistant director of GOER. [REDACTED]  
4 (phonetic), an assistant director of GOER. [REDACTED]  
5 [REDACTED] (phonetic) an assistant director of  
6 GOER. [REDACTED] (phonetic) who is also an  
7 assistant director to GOER.

8 [REDACTED] who is acting deputy  
9 counsel of GOER. [REDACTED] who is director  
10 and counsel for investigations in the  
11 antidiscrimination investigation division of  
12 GOER. [REDACTED] who's also an  
13 assistant director of GOER.

14 When I use assistant director,  
15 sometimes that's a functional title rather than  
16 a civil service title, as we have the  
17 flexibility when somebody's of a certain title  
18 we can make them have an in-house title of that.  
19 And [REDACTED] who is the director for  
20 administration for GOER.

21 Q. And I think you mentioned one of those  
22 direct reports having responsibility for  
23 investigations. Who is that?

24 A. [REDACTED].

25 Q. And is anyone -- is there anyone

1 besides [REDACTED] who has oversight of GOER's  
2 investigations?

3 A. [REDACTED] runs the unit. She has a  
4 staff.

5 Q. Gotcha. But none of your other direct  
6 reports deal with GOER's investigations,  
7 correct?

8 A. Correct.

9 Q. All right. As part of your work -- so  
10 I know you report to the -- whomever serves as  
11 the interim or official deputy Secretary of  
12 Labor in the executive chamber, correct?

13 A. Correct.

14 Q. Is there anyone else with whom you --  
15 you often interact with -- or is there anyone  
16 else in the executive chamber with whom you  
17 interact as part of your job?

18 A. Yes, I will often interact with the  
19 assistant counsel who has GOER in their  
20 portfolio on legal and legislative matters.

21 Q. Anyone else?

22 A. I will speak to many people in the  
23 executive chamber from time to time if there are  
24 labor issues that arise in their portfolios,  
25 whether that be counsel's office or operations.

1 Q. And when you say counsel office there,  
2 you mean the counsel's office of the executive  
3 chamber?

4 A. Correct.

5 Q. Is there any particular practices  
6 around what sort of issues other people in the  
7 executive chamber will bring to your attention?

8 A. No.

9 Q. So am I correct saying it's a sort of  
10 ad hoc thing that -- so, for instance, the chief  
11 of staff of the executive chamber may call you  
12 about an issue?

13 A. Correct.

14 Q. Okay. All right. And you said you  
15 often interact with the assistant counsel,  
16 correct?

17 A. Correct.

18 Q. And who has that been during the time  
19 that you've served as either interim director or  
20 director of GOER?

21 A. Currently it's an individual [REDACTED]  
22 [REDACTED]. And before that was [REDACTED], I don't  
23 recall [REDACTED] last name. Before that was [REDACTED]  
24 [REDACTED].

25 Q. Okay.

1           A.     And there may have been someone else  
2     in there but I'm just not remembering a name at  
3     this point.

4           Q.     Gotcha.  And you're -- you've  
5     testified to interacting on occasion with other  
6     people who work in the senior leadership of the  
7     executive chamber, correct?

8           A.     Correct.

9           Q.     And how frequently do you say you  
10    interact with those people?

11          A.     It's really not subject to any pattern  
12    or number.  It could be, you know, weekly.  It  
13    could be biweekly.  You know, some weeks it's  
14    more often than just, you know, once a week.  
15    Some periods of time it's less.

16          Q.     Gotcha.  All right.  Do you interact  
17    with Governor Cuomo as part of your work?

18          A.     No.

19          Q.     Have you ever spoken to Governor  
20    Cuomo?

21          A.     Yes.

22          Q.     How many times?

23          A.     One time.

24          Q.     When was that?

25          A.     A number of years ago.  It was in

1 connection with a private sector strike that was  
2 going on in the area where I was involved in on  
3 behalf of the administration trying to lead to a  
4 conclusion of the strike and a resolution of  
5 their bargaining.

6 Q. Gotcha. Do you remember approximately  
7 what year this was?

8 A. No.

9 Q. Do you remember what the subject  
10 matter of the strike was?

11 A. It was -- there was a breakdown in  
12 bargaining and the union was striking and  
13 picketing and so I don't know -- you know, other  
14 than being a dispute over the terms and  
15 conditions, I don't know what the specific cause  
16 was at the time.

17 Q. Gotcha. Do you remember or do you  
18 recall the name of the union?

19 A. No.

20 Q. And this one conversation you had with  
21 Governor Cuomo, what was discussed during the  
22 conversation?

23 A. It was a discussion about what the  
24 status of the negotiations was, and it was  
25 regarding what my efforts had been in terms of

1 resolving it. And then from that conversation  
2 we then discussed with -- we -- the two of us  
3 got on the phone with the then president of the  
4 company.

5 Q. Okay. The president of the company at  
6 which those workers were striking?

7 A. Correct.

8 Q. Okay. And what was discussed on the  
9 phone between you, Governor Cuomo and the  
10 president of this company?

11 A. The Governor wanted to speak to the  
12 president, CEO of the company and just to  
13 encourage him to work harder towards resolving  
14 the strike and how important it was because it  
15 was, you know, people out of -- on the picket  
16 line and just reemphasized that we were, you  
17 know, involved to try and work towards an end.  
18 And that was the basic context of the  
19 conversation that I recall.

20 Q. Okay. And did you know the Governor  
21 would be reaching out to you about -- before he  
22 called you?

23 A. No.

24 Q. Did the Governor tell you why he  
25 reached out to you directly?

1           A.     Yes.  No.  When we got on the phone he  
2     asked me, he's like I want to know what the  
3     status of what -- what's been going on there and  
4     what you understand, so ...

5           Q.     How would you describe the Governor's  
6     demeanor during the call with you?

7           A.     Friendly.  To the -- to -- friendly  
8     and to the point I mean, you know.

9           Q.     Gotcha.  And how would you describe  
10    the Governor's demeanor with the president of  
11    the company?

12          A.     He was direct with -- with that  
13    individual.  I, you know, don't recall exactly  
14    what the Governor said just in terms of sum and  
15    substance, but he was direct that he wanted to  
16    see an end to the strike and put this issue  
17    behind the company and the workers.

18          Q.     Okay.  Was it your idea to reach out  
19    to the president of this company?

20          A.     No.  The governor asked me if I could  
21    connect us.

22          Q.     Okay.  Besides interactions with work  
23    do you interact with Governor Cuomo outside of  
24    work at all?

25          A.     No.

1 Q. Have you met with the Governor or  
2 spoken to the Governor any time outside of work,  
3 meaning even at like an event, a, you know,  
4 state event, something like that?

5 A. No.

6 Q. Have you been at attendance at events  
7 where the Governor also is, even if you never  
8 interacted with him personally?

9 A. Yes.

10 Q. How frequently would you say you are  
11 at events with the Governor, even if you do not  
12 interact with him personally?

13 A. I think I've been at two holiday  
14 parties where the Governor was that individuals  
15 were invited to and I attended.

16 Q. Anything else besides those holiday  
17 parties that you can recall?

18 A. No.

19 Q. Okay. And just so I'm clear, you  
20 didn't interact with the Governor personally  
21 during either of these holiday parties, correct?

22 A. Correct.

23 Q. Do you recall observing the Governor  
24 interacting with anyone else at these holiday  
25 parties?

1           A.     At one I know he stood up and said  
2     some remarks to folks at one point during it,  
3     but other than that I was just with the group of  
4     people I was with, so ...

5           Q.     Okay.  No other observations you can  
6     recall of the Governor during either of those  
7     holiday parties?

8           A.     No.

9           MR. GRANT:  Okay.  Do you mind if we  
10    take a five-minute break?

11          THE WITNESS:  No, not at all.  I could  
12    use a glass of water, so ...

13          MR. GRANT:  Great.  Be back in five.

14          THE VIDEOGRAPHER:  Time now is  
15    11:33 a.m.  We're going off the record.  
16    This ends media unit one.

17                                 (Short recess taken)

18          THE VIDEOGRAPHER:  Time now is  
19    11:38 a.m.  We're back on record.  This  
20    begins media unit two.

21    BY MR. GRANT:

22          Q.     All right.  New York State has equal  
23    employment policies that it promulgates for the  
24    employees who work in state government, correct?

25          A.     Correct.

1 Q. Does GOER have any role in formulating  
2 those policies?

3 A. Yes.

4 Q. What is GOER's role in formulating  
5 those policies?

6 A. When the Governor was elected in 2011  
7 we were, we, GOER, me specifically, was part of  
8 a team that put together the first comprehensive  
9 EEO policy for state employees that I'm aware of  
10 for executive branch agencies.

11 Q. Gotcha. Who else was part of this  
12 team?

13 A. It was the then general counsel of the  
14 Department of Civil Service, [REDACTED] -- her name is  
15 escaping me.

16 Q. Take your time.

17 A. Alphonso David who was deputy  
18 secretary for civil rights. The general counsel  
19 for the Division of Human Rights, [REDACTED]  
20 [REDACTED]. And I'm not sure if there was more.

21 There might have been a staff member for  
22 Mr. David who was also involved. That name  
23 would have been [REDACTED], [REDACTED], I  
24 believe. I think he might have been involved.

25 And ultimately that process culminated in a

1 policy that we put out in December of 2011.

2 Q. Gotcha. And you were saying before  
3 this you were unaware of any global policy  
4 governing executive agencies?

5 A. Yeah, each agency took it upon  
6 themselves to formulate and promulgate what  
7 their individual policies were in their -- what  
8 I believe, you know, probably at that time their  
9 employee handbooks.

10 Q. Gotcha. And that would include the  
11 executive chamber?

12 A. I -- I believe so.

13 Q. And do you recall who in the executive  
14 chamber, meaning pre 2011, would have been  
15 responsible for promulgating the executive  
16 chamber's EEO policies?

17 A. No.

18 Q. Okay. And after this, after  
19 December 2011 when the team promulgated or  
20 formulated this policy for all state agencies,  
21 who has been responsible for revising that  
22 policy or changing that policy since then?

23 A. It -- it's been GOER.

24 Q. Okay. Anyone in addition to GOER?

25 A. In 2018 that was the first true update

1 of that document and that was revised between  
2 GOER and the executive chamber. That would have  
3 been Mr. David, it might have been  
4 [REDACTED] and [REDACTED] also at that time.  
5 And it would have been primarily [REDACTED] and  
6 myself for GOER.

7 Q. Okay. And why were you updating or  
8 you described it as the first true update. Why  
9 were you providing a true update to these  
10 policies in 2018?

11 A. In December of 2018, pursuant to  
12 Executive Order No. 187, GOER became responsible  
13 for investigating complaints of protected class  
14 employment discrimination in executive  
15 controlled agencies. Before that the  
16 individuals who investigated them were actual  
17 employees of those agencies. And after  
18 December 2018 those investigators became  
19 employees of GOER.

20 Q. Okay. So let's use the executive  
21 chamber, for instance. Before December 2018 if  
22 there was an investigation of practices at -- in  
23 the executive chamber, it would have been  
24 conducted by an employee of the executive  
25 chamber and not GOER?

1           A.     I don't know at that time if they  
2 would have conducted their own or if they would  
3 have sought looking outside to have somebody  
4 investigate it. We were involved in the  
5 investigations between 2011 and 2018, but it was  
6 more in terms of ensuring that folks are  
7 following policy.

8                     But I don't know if the executive  
9 chamber had an actual assigned person internally  
10 to do it in that period of time. But after  
11 December of 2018 GOER would have been  
12 responsible by that executive order to be the  
13 actual investigative agency.

14           Q.     Gotcha. Did you have any  
15 understanding as to whether or not -- putting  
16 aside whether or not the executive chamber had  
17 somebody assigned for that role, were state  
18 agencies responsible for having a person in that  
19 role?

20           A.     There may have been a requirement to  
21 have an affirmative action officer, but I don't  
22 know that all agencies had one who did  
23 investigations. There was a team approach  
24 employed prior to 2018 in terms of  
25 investigators, so a smallish agency might not

1 have that capacity so there might be an  
2 arrangement with another agency to lend or  
3 borrow somebody to do an investigation. Many of  
4 them did do their -- their own in terms of that  
5 prior to December of 2018, but I -- I'm not  
6 specifically aware of the chamber.

7 Q. Okay. And meaning you're not  
8 specifically aware whether the chamber had any  
9 work sharing arrangement with any other sort of  
10 agencies or lending arrangement?

11 A. Correct.

12 Q. Okay. But you do -- as you recall,  
13 there was not a person -- you don't recall  
14 whether or not there was somebody actually in  
15 that role for the executive chamber before 2018?

16 A. Correct. I -- I don't believe that we  
17 were aware of an actual person in that role, if  
18 in fact there was a person there.

19 Q. Were there any other reasons the  
20 policy was updated in December 2018?

21 A. It was largely to account for the  
22 change in the shift from agencies having their  
23 own affirmative action administrators to them  
24 being at GOER, that was the main purpose of it.  
25 I can't say, as I sit here, there weren't other

1 changes in the policy, but I'm not recalling any  
2 of a substantive nature at this point.

3 Q. Gotcha. And with respect to the  
4 global equal employment policies that are  
5 implemented for state government, is there  
6 anything particular about the rules that apply  
7 to the executive chamber?

8 A. Nothing particular that's different  
9 than any other agency, in my opinion.

10 Q. Okay. When you say in your opinion,  
11 what do you mean?

12 A. I mean just based on how the policy is  
13 drafted and my general awareness, there's  
14 nothing in there that specifically deals with  
15 any agency different than another agency,  
16 including the executive chamber.

17 Q. Okay. Do you know who in the  
18 executive chamber is responsible for overseeing  
19 that the rules outlined in the state's EEO  
20 policies are implemented and over -- or who's  
21 responsible for overseeing the implementation  
22 and enforcement of these policies in the  
23 chamber?

24 A. Not -- no, I -- I don't know who has  
25 that duty specifically in the chamber.

1 Q. Do you know who in the executive  
2 chamber provides any sort of human -- human  
3 resources functions for the chamber?

4 A. Yes.

5 Q. Who?

6 A. That would be Lauren Grasso,  
7 G-R-A-S-S-O.

8 Q. Okay. Anyone besides Lauren Grasso?

9 A. Not that I'm aware of.

10 Q. And again, you don't recall anyone  
11 specifically who's responsible in the chamber  
12 for overseeing the, you know, implementation and  
13 enforcement of the policies?

14 A. Yeah, I never have had a conversation  
15 about specifically who's implementing or  
16 enforcing or ensuring compliance with them.

17 Q. Okay. Could you turn to tab number  
18 three.

19 (Exhibit 3, Current EEO policy of state  
20 executive branch agencies with a launch date of May  
21 2020, marked for identification.)

22 A. I'm there.

23 Q. Could you take a moment to quickly  
24 review it and let me know when you're ready?

25 A. I'm ready.

1 Q. Okay. And do you recognize this  
2 document?

3 A. Yes.

4 Q. What is it?

5 A. This is the current EEO policy of  
6 state executive branch agencies with a launch  
7 date of May 2020.

8 Q. And were GOER responsible for creating  
9 this document?

10 A. Yes.

11 Q. Okay. And that's part of the process  
12 you've described before that back in 2011 you  
13 first implemented this global policy and since  
14 then there have been revisions to that policy  
15 for time, correct?

16 A. Correct.

17 Q. Okay.

18 A. Sorry, I didn't let you finish.  
19 Correct.

20 Q. Oh, not a problem. I mean, again it's  
21 a problem for the court reporter but yeah, not a  
22 problem for me.

23 And this -- the policies outlined in  
24 this handbook apply to all state employees,  
25 correct, or who work in state agencies I should

1 say.

2 A. Who work in state agencies that are  
3 subject to direct executive control. There's a  
4 few state agencies that are not subject to  
5 direct control: The attorney general, the  
6 Office of State Comptroller, the state education  
7 department. I think they follow all of these  
8 things, but -- but technically this document  
9 would only apply to those entities that the  
10 Governor has direct executive control over.

11 Q. And that would include the executive  
12 chamber though, right?

13 A. Yes.

14 Q. Okay. Do you know whether or not or  
15 how is this handbook -- is this handbook  
16 distributed to all state or all state agency  
17 employees that have direct executive control?

18 A. It is. I don't think it's given to  
19 everybody but agencies are put on notice that it  
20 exists, and I believe those agencies reference  
21 the handbook in their intranet sites and how --  
22 and advising employees how to file complaints.  
23 And it's also referenced in -- linked in our  
24 annual trainings.

25 Q. Okay. So employees in state agencies

1 with direct executive control are supposed to be  
2 informed of the existence of these policies,  
3 correct?

4 A. Correct.

5 Q. Okay. Could you go to page 11.

6 A. I'm there.

7 Q. And could you take a moment to read  
8 under "sexual harassment" and go through to the  
9 end of page 12.

10 A. You said through the end of 12?

11 Q. Yes, sir.

12 A. Okay.

13 Q. Okay. Am I correct that the policy  
14 states, "Actions that may constitute sexual  
15 harassment based upon a hostile work environment  
16 may include but are not limited to words, signs,  
17 jokes, pranks, intimidation or physical violence  
18 which are of a sexual nature or which are  
19 directed at an individual because of that  
20 individual's sex.

21 "Sexual harassment also consists of  
22 any unwanted, verbal or physical advances,  
23 sexually explicit derogatory statements or  
24 sexually discriminatory remarks made by someone  
25 which are offensive or objectionable to the

1 recipient which cause the recipient discomfort  
2 or humiliation or which interfere with the  
3 recipient's job performance".

4 A. That's correct.

5 Q. Okay. And it also states that  
6 sexual -- that "sexual harassment is unlawful  
7 when it subjects an individual to inferior  
8 terms, conditions or privileges of employment.  
9 Sexual harassment need not be severe or  
10 pervasive to be unlawful and can be sexually  
11 harassing -- and can be any sexually harassing  
12 conduct that consists of more than petty slights  
13 or trivial inconveniences."

14 Am I correct?

15 A. That is correct.

16 Q. And the policy further states, "it is  
17 not a requirement that an individual tell the  
18 person who is sexually harassing them that the  
19 conduct is unwelcome. In fact, the human rights  
20 law now provides that even if a recipient of  
21 sexual harassment did not make a complaint about  
22 the harassment to the employer, the failure of  
23 the employee to complain shall not be  
24 determinative of whether the employee is  
25 liable."

1 Am I correct?

2 A. Correct.

3 Q. And you were aware of this definition  
4 of sexual harassment being that definition that  
5 implied to state agency -- to employees in state  
6 agencies with executive control, correct?

7 A. Correct.

8 Q. Okay. And that would include the  
9 executive chamber, correct?

10 A. Correct.

11 Q. Okay. If you take a look at the next  
12 page, page 13. And take a moment to read that  
13 to yourself, just the part under reporting  
14 sexual harassment.

15 A. Okay.

16 Q. Okay. Am I correct that it states,  
17 "Any complaint, whether verbal or written, must  
18 be investigated by GOER or pursuant to an  
19 employee agency's policy. Furthermore, any  
20 supervisory or managerial employee who observes  
21 or otherwise becomes aware of conduct of a  
22 sexual harassing nature must report such conduct  
23 so that it can be investigated.

24 "If an employee is harassed by a  
25 coworker or a supervisor, it is very important

1 that a complaint be made to a higher authority  
2 promptly. An agency cannot stop sexual  
3 harassment unless it has knowledge of the  
4 harassment. Once informed, the conduct must be  
5 reported to GOER or the employee agency which is  
6 required to initiate an investigation and  
7 recommend prompt and effective remedial action  
8 where appropriate."

9 Is that correct?

10 A. Correct.

11 Q. And this applies to the obligations of  
12 state supervisory or managerial employees in  
13 state agencies with direct executive control,  
14 correct?

15 A. Correct.

16 Q. Including the executive chamber?

17 A. Correct.

18 Q. Okay. Have you ever had someone  
19 report sexual harassment to you?

20 A. Yes.

21 Q. How many times?

22 A. Well, there were the -- there's the  
23 one complaint that came directly to me that we  
24 turned over from March of 2021. There was the  
25 additional complaint reported from April of 2021

1 that Ms. Garvey made me aware was coming. I'm  
2 not -- I'm not specifically recalling any other  
3 complaints of sexual harassment that were made  
4 directly to me at this point.

5 Q. Or even if not directly directed to  
6 you, are you aware of any other complaints of  
7 sexual harassment from the executive chamber  
8 prior to March 2021?

9 A. I believe there was another complaint  
10 that we referred as part of the initial  
11 disclosure packet. I was aware of that. The  
12 name of the individual involved is escaping me  
13 at this point. And I think the other ones may  
14 be in process in terms of what [REDACTED] is  
15 looking at now for the current clarification but  
16 those wouldn't necessarily be involving the  
17 executive chamber. That's more of the general  
18 other complaints. But I think those are the  
19 only three that I'm aware of in terms of  
20 complaints.

21 Q. And that complaint you referenced  
22 earlier, is that one against [REDACTED]

23 A. That is the name yes, [REDACTED]

24 Q. All right. Going back to page 13 it  
25 also states, "In accord with statewide policy,

1 employees and interns are subject to discipline  
2 for harassment of anyone in the workplace,  
3 including contractors, clients, vendors or any  
4 members of the public".

5 Is that correct?

6 A. That is correct.

7 Q. And is your understanding that implies  
8 [sic] to all state agency employees and agencies  
9 with direct executive control, correct?

10 A. Correct.

11 Q. If I can refer your attention to  
12 pages 41 or to page 41, and if I -- you can  
13 start at the paragraph at the bottom of that  
14 page and go over to the end of the paragraph  
15 which concludes at the top of page 42.

16 A. Okay.

17 Q. Am I correct that it states, "An  
18 employee with supervisory responsibility has a  
19 duty to report any discrimination that they  
20 observe or otherwise know about. A supervisor  
21 who has received a complaint of workplace  
22 discrimination has a duty to report it to GOER  
23 or in accordance with the employing agency's  
24 policy, even if he -- even if the individual who  
25 complained request that it not be reported."

1 Am I correct?

2 A. Correct.

3 Q. And this is, as I said before, applies  
4 to all state agency employees or supervisory or  
5 managerial employees in state agencies with  
6 direct executive control, correct?

7 A. Correct.

8 Q. And that includes the executive  
9 chamber, right?

10 A. Correct.

11 Q. Okay. Would -- do you understand that  
12 calling you -- so, for instance, if you got a  
13 call from somebody in the executive chamber is  
14 it your understanding that that person's call to  
15 you about potential discrimination would fulfill  
16 the supervisor's duty to report discrimination?

17 A. No, it may satisfy it in part but it  
18 would not be how we would handle it.

19 Q. What else would need to be done?

20 A. That individual who is calling us  
21 should, A, give the individual who is the  
22 potential complainant the form or tell them  
23 where the form is, ask them to fill it out, and  
24 if they do not they should fill out the form  
25 themselves and -- with all the information they

1 have and report it to GOER.

2 Q. Okay. So even if the complainant him  
3 or herself does not complete the form, the  
4 person who's reporting the misconduct or  
5 potential misconduct should complete the form  
6 anyway and report it to GOER, correct?

7 A. Correct.

8 Q. And at that point GOER would conduct  
9 an investigation, correct?

10 A. Correct.

11 Q. Okay. If I can refer you to page 39.

12 A. 39 you said?

13 Q. Yes.

14 A. Okay.

15 Q. We're going forward again, sorry.

16 A. No.

17 Q. And could you read pages 39 under  
18 "retaliation" up until the middle of page 40 to  
19 yourself and let me know when you're ready.

20 A. Okay.

21 Q. Okay. And am I correct that it  
22 states, among other things, "retaliation is  
23 prohibited. Retaliation occurs when an adverse  
24 action or actions are taken against the employee  
25 as a result of filing a discrimination complaint

1 or participating in the filing of or  
2 investigation of a discrimination complaint or  
3 requesting an accommodation.

4 "The adverse action does not need to  
5 be job related or occur in the workplace.  
6 Retaliation can be any action more than trivial  
7 that would have the effect of dissuading a  
8 reasonable person from making or supporting an  
9 allegation of discrimination. Such action may  
10 be taken by an individual employee."

11 Am I correct?

12 A. Correct.

13 Q. And that is the policy of retaliation  
14 that applies to all state employees and state  
15 agencies with direct executive control, correct?

16 A. Correct.

17 Q. Including the executive chamber,  
18 correct?

19 A. Correct.

20 Q. Okay. And furthermore, it states on  
21 that page, "Actionable retaliation by an  
22 employer can occur after the individual is no  
23 longer employed by that employer. This can  
24 include giving an unwarranted, negative  
25 reference for a former employee."

1           Is that correct?

2           A.    Correct.

3           Q.    And, again, this is the policy that  
4 applies to all state employees and state  
5 agencies with direct executive control, correct?

6           A.    Correct.

7           Q.    Including the executive chamber,  
8 right?

9           A.    Correct.

10          Q.    Okay. All right. If you can go to  
11 Tab 4.

12                   (Exhibit 4, EEO policy with a December  
13 2018 date on the front of it that GOER promulgated,  
14 marked for identification.)

15          Q.    Take a moment to quickly peruse that  
16 document and let me know when you're ready.

17          A.    I'm ready.

18          Q.    Do you recognize that document?

19          A.    Yes.

20          Q.    And what is that document?

21          A.    This is the EEO policy with a  
22 December 2018 date on the front of it that GOER  
23 promulgated.

24          Q.    Gotcha. And this outlines equal  
25 employment policies for state employees and

1 executive agencies with direct executive  
2 control, right?

3 A. Correct.

4 Q. And that would include the executive  
5 chamber, correct?

6 A. Correct.

7 Q. So any of the policies outlined in  
8 here would be those that apply to executive  
9 chamber employees as of December 2018, correct?

10 A. Correct.

11 Q. All right. If you can turn to Tab 5.

12 (Exhibit 5, Most recent version of our  
13 sexual harassment in the work place prevention  
14 training, marked for identification.)

15 Q. Please take a moment to review the  
16 document and let me know when you're ready.

17 A. I'm ready.

18 Q. Great. Do you recognize this  
19 document?

20 A. Yes.

21 Q. And what is it?

22 A. This is the most recent version of our  
23 sexual harassment in the work place prevention  
24 training that we put forward so that agencies  
25 can train their employees in sexual harassment

1 prevention.

2 Q. Gotcha. And who makes it?

3 A. I'm sorry?

4 Q. And GOER makes the document, correct?

5 A. Correct.

6 Q. Okay. And you distribute this to the  
7 state agencies, correct?

8 A. Correct.

9 Q. And are the state agencies thereafter  
10 responsible for providing sexual harassment  
11 training based on what's outlined here?

12 A. Correct. They're -- they're -- well,  
13 let me -- let me correct my statement.

14 Q. Sure.

15 A. They're not -- not based on this.  
16 This is what they're supposed to give their  
17 employees.

18 Q. Okay.

19 A. It -- it can be in different forms but  
20 this is what is supposed to be given to  
21 employees.

22 Q. Gotcha. And that would include  
23 executive and chamber employees, correct?

24 A. Correct.

25 Q. And when you distribute this, how do

1 you distribute this to the agencies, including  
2 the executive chamber?

3 A. When the policies are available for  
4 the year we send out an announcement to agency  
5 HR practitioners, human resources practitioners,  
6 usually the directors of human resources and to  
7 the training directors for those agencies who  
8 are then in charge of making sure people are  
9 signed up and take the training.

10 Q. Gotcha. And we had a conversation  
11 earlier about it being a little bit unclear  
12 who's in charge of like human resources in the  
13 chamber. Who in the executive chamber is given  
14 these documents to give to the executive chamber  
15 employees?

16 A. It would be my belief that that would  
17 be their director of HR who is currently Lauren  
18 Grasso. She would receive the E-mail that we  
19 send out saying this information or the training  
20 is available because we do an annual launch of  
21 this and other trainings. So I believe she  
22 would currently be the person who would get  
23 that. I don't know who would operationalize it  
24 there, whether it would be her or somebody else.

25 Q. Okay. But it would be your

1 understanding that Ms. Grasso, after receiving  
2 this, would be responsible for making sure that  
3 the training is disseminated to employees and  
4 that those employees take the training, correct?

5 A. Correct.

6 Q. Okay. And how is the training  
7 provided to employees? Is it online? Is it a  
8 pamphlet? What is -- how is it presented?

9 A. It -- there are a number of different  
10 ways, depending on the training, but this  
11 particular training is available on -- online so  
12 that if you are a desk employee you can take it  
13 through our online system. Or it's available in  
14 PDF forms or, you know, this -- I guess this  
15 would be a PDF because it would not be printed  
16 out.

17 They can print it out on their end and  
18 have somebody review it and take it that way but  
19 we maintain PDF forms of this so an agency can  
20 use it if computer access isn't readily  
21 available or they decide to take it in paper  
22 form.

23 Q. Gotcha. Okay. And when the person or  
24 the employee takes it online, is there any sort  
25 of certification that's done to ensure

1 compliance, meaning that the training was  
2 actually completed?

3 A. The online system has what I'll call  
4 an exit button at the end, and when you hit that  
5 button it takes steps to denote that you've  
6 completed the training in the system.

7 Q. Okay. And when somebody takes the  
8 training based on the PDF, what is the  
9 certification process there?

10 A. I believe there's a paper  
11 certification that's available that gets signed  
12 that the employee attests that they've completed  
13 the training and -- yeah, it's a -- it's a --  
14 it's a paper form that we make available. I  
15 believe it's in a separate file than this, than  
16 the PDF of the training itself.

17 Q. Gotcha. And is it your understanding  
18 that each employee must individually do the  
19 training or is it possible for another employee  
20 to take the training on that employee's behalf?

21 A. Each -- each agency is supposed to  
22 ensure that individual employees take the  
23 training. That's not to say that in some  
24 environments individuals might not be taking the  
25 training together at the same time in the same

1 room.

2 Like, for example, Department of  
3 Corrections, correction officers don't -- don't  
4 sit at desks so they would go for dedicated  
5 training periods so there might be a class of  
6 them together all taking this training at the  
7 same time. But every individual is supposed to  
8 be trained. I can't take the training for  
9 another member of my staff and that staff member  
10 can't take a training for me.

11 Q. Gotcha. So it would be prohibitive,  
12 for instance, if employee Linda tells employee  
13 Brittany, Brittany could you sit by my computer,  
14 tap all the buttons, get through the training  
15 and certify for me?

16 A. Yes, that's not what -- that's not  
17 what's being contemplated when we launched the  
18 training, at all.

19 Q. Gotcha. And who maintains the records  
20 of the certifications or completion of the  
21 trainings?

22 A. If it's -- if it's taken in our  
23 computer system, online system, the system  
24 maintains it. If it's taken in person, the  
25 agency would maintain that certification,

1     although they could do what's called like a bulk  
2     upload and upload employee names into the system  
3     that have completed the training but ultimately  
4     they should have the -- whatever record they're  
5     keeping to denote all those employees completed  
6     that training.

7           Q.     Okay.  So, for instance, with the  
8     executive chamber, if it was an employee who  
9     took it through the paper route as opposed to  
10    the online route, Ms. Grasso should have a  
11    record or there should be some recordation of  
12    the employees who certify completing it  
13    through -- through the paper route?

14          A.     Yeah, I would expect there to be some  
15    type of paper record that there was a  
16    completion.

17          Q.     Okay.  And am I correct, again, that  
18    every employee, including the Governor, has to  
19    take sexual harassment training?

20          A.     I have to be technical here.  I don't  
21    believe the Governor by law is an employee, but  
22    I believe the Governor is subject to the  
23    training.

24          Q.     Okay.

25          A.     And has taken the training.

1 Q. Okay. When you disseminate this  
2 sexual harassment training, is it your  
3 understanding that the Governor would be among  
4 those who would be taking this training?

5 A. Yeah, we don't specifically note and  
6 the Governor. We do say to employees and others  
7 and interns and the agencies, but, you know, I  
8 am assuming, without knowing, that the Governor  
9 is being given the training that we promulgated.

10 MR. KIM: Hi. Can I ask a follow-up  
11 question? Hi, Mr. Volforte. How are you?  
12 This is Joon Kim. I think we've met  
13 before.

14 THE WITNESS: Yeah. Good afternoon.

15 MR. KIM: I've been on mute. You  
16 mentioned that you're not sure the Governor  
17 is an employee of New York State. What did  
18 you mean by that?

19 THE WITNESS: I recall, and maybe it  
20 was case -- case law that -- I -- I believe  
21 that the elected officials of the state,  
22 like legislatures and the statewide elected  
23 officials, I don't think they're  
24 technically considered an employee of the  
25 state, although they're certainly, you

1 know, they work for the state. So that's  
2 the only context that I mean is that I --  
3 you know, in terms of using the term  
4 technically being employee. I do recall  
5 something out there in terms of elected  
6 officials that they're technically not  
7 employees of the places that they're  
8 elected to serve. That -- that's the  
9 context I'm meaning.

10 MR. KIM: But for the purposes of the  
11 sexual harassment training or being  
12 obligated to comply with state law and  
13 policies, is there any difference in your  
14 mind between elected officials and others.

15 THE WITNESS: In my mind? For this  
16 purpose, no.

17 MR. KIM: Are you aware of any legal  
18 differentiation -- basis to differentiate  
19 elected officials versus nonelected  
20 officials?

21 THE WITNESS: Not aware of any legal  
22 opinion or decision or even a conversation  
23 to that effect. I just wanted to  
24 technically state that, you know, some  
25 understanding on my part about that

1 technical difference about the term  
2 "employee."

3 MR. KIM: Okay. Sorry, Yannick.

4 MR. GRANT: No problem.

5 BY MR. GRANT:

6 Q. And do you have any understanding as  
7 to how often employees must take this training?

8 A. This training is a yearly training.

9 Q. Since when has it been a yearly  
10 training?

11 A. We have I believe had this training  
12 since either 2013 or 2014 on a yearly basis,  
13 except we did not launch it the year of the  
14 pandemic, so we did not launch it in 2020.

15 Q. Okay. But every year, excluding 2020,  
16 in light of the extraordinary circumstances that  
17 year, it's your understanding that this has been  
18 a yearly training for all state employees and  
19 state agencies under direct executive control,  
20 correct?

21 A. Correct.

22 Q. Okay. And that the policies in the  
23 training like this apply to all of those  
24 employees, correct?

25 A. Correct.

1 Q. Okay. And can you go to page 6 of  
2 that PDF.

3 A. Page 6, yes.

4 Q. And could you read under where it  
5 says, "Who can be a perpetrator of sexual  
6 harassment?" Up until the point where it says,  
7 "Where can sexual harassment occur?"

8 A. Yes.

9 Q. Okay. Does that accurately -- what  
10 you read, meaning the perpetrator of a sexual  
11 harassment being a coworker, supervisor,  
12 manager, third party, does that accurately  
13 reflect the policy as it applies to New York  
14 State employees and state agencies with direct  
15 executive control?

16 A. Yes.

17 Q. Including those in the executive  
18 chamber?

19 A. Yes.

20 Q. And that policy states that,  
21 "Regardless of who is perpetrating the  
22 harassment it should be reported to GOER either  
23 by the victim or the manager or supervisor that  
24 that the victim reports that conduct to."

25 Correct?

1 A. Correct.

2 Q. Okay. If you can go to page 14.

3 A. Yes.

4 Q. And if you can read under where it  
5 says -- where it's bolded "Investigation and  
6 corrective action."

7 A. Yes.

8 Q. Okay. And it states, "All reports of  
9 discrimination based on protected  
10 characteristics will be investigated. If it is  
11 determined that harassing behavior is occurring,  
12 the agency must take prompt and effective  
13 corrective action to stop the harassment and to  
14 take appropriate steps to see your harassment  
15 will not occur in the future."

16 Correct?

17 A. Correct.

18 Q. And does that accurately reflect state  
19 policy as it applies to New York State employees  
20 and state agencies with direct executive  
21 control?

22 A. Yes.

23 Q. Including the executive chamber?

24 A. Correct.

25 Q. Okay. Could you turn to Tab 7.

1           Or actually, first -- sorry -- can you  
2           turn to Tab 6.

3           (Exhibit 6, 2017 version of sexual  
4           harassment in the workplace prevention training,  
5           marked for identification.)

6           A.     Certainly.

7           Q.     Take a moment to peruse this document  
8           and let me know when you're ready.

9           A.     All set.

10          Q.     Okay. Do you recognize this document?

11          A.     Yes.

12          Q.     What is it?

13          A.     This is the 2017 version of sexual  
14          harassment in the workplace prevention training.

15          Q.     Okay. And like the document we were  
16          just discussing, the policies outlined in here  
17          should have been disseminated to state employees  
18          and state agencies with direct executive  
19          control, correct?

20          A.     Correct.

21          Q.     And that would include the executive  
22          chamber, correct?

23          A.     Correct.

24          Q.     And those employees would be  
25          responsible for completing the training,

1 correct?

2 A. Correct.

3 Q. And either GOER or the state agency,  
4 depending on how the training is completed,  
5 should keep a record of who completed the  
6 training, correct?

7 A. Correct.

8 Q. And that would include the governor,  
9 correct?

10 A. Yes.

11 Q. Okay. All right. Now you can go to  
12 Tab 7.

13 (Exhibit 7, Executive Order No. 187 issued  
14 in August of 2018, marked for identification.)

15 Q. Please take a moment to review the  
16 document and let me know when you're ready.

17 A. I'm ready.

18 Q. Okay. Do you recognize this document?

19 A. Yes.

20 Q. And what is it?

21 A. This is a copy of Executive Order No.  
22 187 issued in August of 2018.

23 Q. Okay. And you testified about this  
24 order earlier, correct?

25 A. Correct.

1 Q. And this was the order that mandated  
2 that from now moving forward that GOER would be  
3 responsible for investigating discrimination  
4 complaints from state agencies with direct  
5 executive control, correct?

6 A. Correct.

7 Q. And I recall that from your earlier  
8 testimony that prior to that time somebody in  
9 the state agency should have been investigating  
10 allegations of sexual harassment for that  
11 agency, correct?

12 A. Correct to the extent that they had a  
13 person assigned, and if not we would -- there  
14 would be an arrangement made to have somebody  
15 else from the outside of that who was in a --  
16 and you normally need an affirmative action  
17 title investigate that complaint.

18 Q. Gotcha. And that would include the  
19 executive chamber, correct?

20 A. Correct.

21 Q. Although you cannot recall who that  
22 particular employee would have been in the  
23 executive chamber?

24 A. Yeah, I don't know that they had  
25 anybody specifically designated. I'm not aware

1 of whether they did or didn't.

2 Q. Gotcha. All right. If you can go to  
3 the following tab. Take a moment to review it  
4 and let me know you're ready.

5 (Exhibit 8, December 3 memo from me to  
6 state agency and authority general counsels, marked  
7 for identification.)

8 A. Yes.

9 Q. Okay. And do you recognize that  
10 document?

11 A. Yes.

12 Q. And what is it?

13 A. It is a December 3 memo to -- from me  
14 to state agency and authority general counsels.

15 Q. Okay. And what was the purpose of  
16 this memo?

17 A. This was announcing the culmination of  
18 the transfer of function, which moved the  
19 investigative duties from state executive branch  
20 controlled agencies to GOER and making sure that  
21 everyone was aware that the updated handbook and  
22 process that was going to be followed for  
23 investigating complaints of protected class  
24 discrimination.

25 Q. Gotcha. And on that page it states,

1 among other things, "that GOER" -- sorry, that  
2 GOER would quote -- or that GOER would be "fully  
3 supervising all equal employment opportunity -  
4 affirmative action officers who would perform  
5 those investigations."

6 Correct?

7 A. Correct.

8 Q. And what did you mean by fully  
9 supervising? Meaning, would those employees be  
10 part of GOER now, would they remain employees of  
11 the state agencies but have to report to you?  
12 What -- what does that mean?

13 A. It means that they would be employees  
14 of GOER and we would have direct supervisory  
15 control over those employees which didn't exist  
16 before EO 187.

17 Q. Gotcha. And is it your understanding  
18 that in connection with GOER performing  
19 investigations that GOER is beholden to any  
20 other agency or division or does it have  
21 independent authority?

22 A. By virtue of this executive order it's  
23 got the authority to investigate the complaints  
24 and reach determinations.

25 Q. Gotcha. Okay. And do you recall ever

1 speaking with anyone in the executive -- or  
2 would you have also distributed this memorandum  
3 to those in the executive chamber?

4 A. I think the -- my recollection is, is  
5 this memo went out from the executive chamber to  
6 the agencies.

7 Q. Okay. Including -- oh. This memo  
8 went from the executive chamber to the agencies?

9 A. I -- I believe it did.

10 Q. Okay. Even though it's from you?

11 A. Even though it's from me, yes.

12 Q. Okay. Okay. And could you turn to  
13 Tab 9.

14 (Exhibit 9, November 29, 2018 memo from me  
15 to directors of human resource management that  
16 outlines all the steps we expect them to take  
17 regarding implementation of our new authority under  
18 Executive Order 187, marked for identification.)

19 Q. Take a moment to review and let me  
20 know when you're ready.

21 A. Yes.

22 Q. Okay. Do you recognize that document?

23 A. Yes.

24 Q. And what is it?

25 A. It's a November 29, 2018 memo from me

1 to directors of human resource management that  
2 outlines all the steps we expect them to take  
3 regarding implementation of our new authority  
4 under Executive Order 187.

5 Q. Understood. And you would have sent  
6 this to human resources employees and state  
7 agencies, correct?

8 A. Correct.

9 Q. And that would have included Lauren  
10 Grasso of the executive chamber?

11 A. Assuming she was in that position at  
12 that time, which I'm not sure if she was or her  
13 predecessor was, but it should have gone to that  
14 individual as well.

15 Q. Okay. But as you recall someone in  
16 the executive chamber should have received this  
17 blank memorandum?

18 A. Yes.

19 Q. Okay. And it says, among other  
20 things, that "each agency must post a link to  
21 the EEO rights and responsibilities handbook on  
22 this intranet or Internet."

23 What, if anything, does GOER do to  
24 make sure its agencies meet this obligation?

25 A. I think in the beginning we reached

1 out to the agencies to ensure they had done  
2 this, but I -- that might have been a  
3 responsibility that fell on the actual  
4 antidiscrimination investigations division, but  
5 I think we checked in with the agencies to make  
6 sure that they had posted.

7 Q. Okay. And when you say the  
8 antidiscrimination division, is that a division  
9 of GOER or a division of some other entity?

10 A. That's a division of GOER that does  
11 the discrimination investigations.

12 Q. Okay. Are you aware, sitting here  
13 today, whether or not the executive chamber met  
14 this obligation at the time? So sometime in the  
15 end of 2018 heading into 2019.

16 A. I -- I'm -- I'm not aware if they did  
17 or they didn't.

18 Q. Okay. And your memo also states that  
19 agencies must post the New York discrimination  
20 complaint form on its intranet or Internet.  
21 What, if anything, does GOER do to make sure  
22 that agencies meet that obligation?

23 A. I believe that might have been, if --  
24 if, in fact, I'm correct, part of that initial  
25 check that was done when this was launched.

1 I -- I don't know what current checks are -- are  
2 done, if -- if any.

3 Q. Okay. And sitting here today are you  
4 aware whether or not the executive chamber met  
5 its obligation at the time this memorandum was  
6 sent out?

7 A. No.

8 Q. And the memo also states that the  
9 agency must post a contact information for the  
10 agencies GOER investigator on its intranet or  
11 Internet. What, if anything, did GOER do to  
12 make sure agencies met this obligation?

13 A. To the extent that I'm recalling  
14 correctly about the prior two paragraphs, it  
15 would have been part of that same process.

16 Q. Okay. And are you aware, sitting here  
17 today, whether or not the executive chamber met  
18 that obligation at the time?

19 A. Not aware.

20 Q. Were you ever, did you ever become  
21 aware of a time when you learned that the  
22 executive chamber had not satisfied any of these  
23 obligations?

24 A. No, I'm not -- I don't recall that I  
25 ever was made aware of that.

1 Q. And who is the executive chamber's  
2 current GOER investigator?

3 A. There is no GOER investigator for the  
4 chamber.

5 Q. Okay. So who is contact information  
6 provided for, you know, a GOER investigator?

7 A. That would -- how it works is if  
8 there's not an investigator on site they would  
9 follow the links to directly file with GOER.

10 Q. And is it a group of investigators?  
11 So I'm just trying to figure out, GOER employs  
12 the people performing the investigations now,  
13 correct?

14 A. Correct.

15 Q. Okay. So there's a pool of people who  
16 can serve as investigators, right?

17 A. Correct.

18 Q. All right. Who -- are any of them  
19 especially assigned to the executive chamber?

20 A. Not that I am aware of.

21 Q. Okay. So, so long as there's  
22 information on the intranet site that directs  
23 them to filing with GOER generally, it would be  
24 assigned to any one of these investigators,  
25 correct?

1           A.     Correct.

2           Q.     Okay.  How many investigators are  
3 there currently?

4           A.     Currently I believe there are 25.

5           Q.     Okay.  And is 25 the number that's  
6 typically there or has that fluctuated over  
7 time?

8           A.     It's fluctuated over time.

9           Q.     Could you tell me how it's fluctuated  
10 since 2017?  Or since 2018?

11          A.     Since 2018 it's -- it's gone down  
12 through retirements and attrition through the  
13 pandemic.

14          Q.     Okay.  Could you describe any more  
15 about specific numbers, how it's changed?

16          A.     I think the initial number might have  
17 been 35 individuals who came over.  There were  
18 vacancies and the like and it's just gone down  
19 since then, although we're currently trying to  
20 hire more staff.

21          Q.     Gotcha.  All right.  Is there any  
22 particular need why you have to hire more staff  
23 now?

24          A.     More staff leads to faster  
25 investigations, so we just -- keeps the overall

1 number lower in terms of a per capital  
2 investigative assignments. So I think it's  
3 warranted to have more staff to be able to do  
4 it. And it helps you plan better for when you  
5 run into pockets of people who want to change  
6 career, who wind up being able to retire. So,  
7 you know, it just allows better for transition  
8 planning and the like, so ...

9 Q. Okay. And your memo also states that  
10 agencies must make alternate arrangements for  
11 the handbook and complaint forms to be  
12 accessible to employees who do not normally  
13 access computers as part of their job duties,  
14 correct?

15 A. Correct.

16 Q. What, if anything, does GOER do to  
17 make sure agencies meet that obligation?

18 A. Unless it's part of the process that I  
19 talked about before, I'm not aware of anything  
20 currently that we do.

21 Q. So you're not aware of any sort of,  
22 you know, annual audit to make sure that the  
23 handbook and complaint form are still being made  
24 accessible to employees who do not typically  
25 access a computer as part of their job duties?

1           A.     No, I'm not aware if there -- if there  
2     is. I know I'm not sending out any audits or  
3     conducting any audits. I don't know whether our  
4     division, the antidiscrimination division does  
5     that on their own.

6           Q.     And are you aware of the executive  
7     chambers' compliance with this provision in any  
8     way?

9           A.     No, I'm not aware.

10          Q.     Okay. It's -- your memo also states  
11     that agencies are required to communicate the  
12     information to employees on a monthly basis and  
13     immediately if changes are made. What does GOER  
14     do to make sure that agencies are meeting that  
15     obligation?

16          A.     I believe that the antidiscrimination  
17     investigation's division maintains that and  
18     they're -- they do follow-ups with agencies or  
19     receive information in that regard.

20          Q.     Okay. And are you aware of whether or  
21     not the executive chamber is meeting its  
22     obligation to provide monthly communication of  
23     the policy?

24          A.     No, I'm not.

25          Q.     Okay. If you can go to Tab 10.

1                   (Exhibit 10, May 2020 update, marked for  
2 identification.)

3           Q.     Take a moment to review and let me  
4 know when you're ready.

5           A.     Yes.

6           Q.     Do you recognize this document?

7           A.     Yes.

8           Q.     And what is it?

9           A.     This is a May 2020 update which  
10 coincided with the revised handbook that updated  
11 agencies on their requirements regarding  
12 complaints of protected class discrimination,  
13 how they needed to advise agencies -- excuse me,  
14 advise their employees in this regard.

15          Q.     Okay. And is there any particular  
16 reason -- the policies outlined here are the  
17 same as those in the previous memo; am I  
18 correct?

19          A.     Yes.

20          Q.     Is there any reason why in 2020 you  
21 needed to send the reminder as to the same  
22 policies?

23          A.     One, we wanted to alert agencies about  
24 the revision to the handbook to make sure that  
25 in case they had actually posted a copy of the

1 handbook rather than a link to the handbook that  
2 folks would not find -- press the link -- look  
3 at the old handbook when they should be looking  
4 at a copy of the new handbook rather than  
5 hitting a link and getting to the updated one?

6 And I believe we also launched -- in  
7 addition to a fillable PDF I think we also  
8 launched a web form at this time which allows  
9 the individual to fill out information and the  
10 form gets directly submitted to GOER rather than  
11 having an electronic form they have to submit.

12 Q. Gotcha. And if you can look at the  
13 end of that document, so on the second page. It  
14 states at the bottom or right above the  
15 signature line, "Please ensure that this  
16 information is distributed immediately to all  
17 employees and cc antidiscrimination at  
18 goer.newyork.gov on all communications attaching  
19 the memo."

20 Am I correct?

21 A. Correct.

22 Q. Do you know, what steps did GOER  
23 make -- do to make sure that agencies complied  
24 with that obligation?

25 A. I'm not aware of the steps that the

1 unit took in that regard.

2 Q. Okay. And do you know whether or not  
3 the executive chamber actually E-mailed this  
4 stuff to their employees?

5 A. I'm not aware of if they did or did  
6 not.

7 Q. Okay. And -- but if you would assume  
8 that you don't have an -- the E-mail address  
9 that's referenced, that goes to GOER, right?

10 A. Yes.

11 Q. So if GOER hasn't produced it or if  
12 GOER doesn't have it, should we assume that the  
13 executive chamber didn't?

14 A. If we don't have it I don't know that  
15 we can assume that they didn't, but -- so I  
16 think it's all I can really say about that  
17 question.

18 Q. Gotcha. And GOER isn't performing any  
19 audits, meaning it hasn't reviewed the E-mails  
20 it's got into that address to figure out whether  
21 or not any particular agency has not in fact  
22 E-mailed it to employees?

23 A. I'm not aware of any -- whether  
24 auditing is occurring or not occurring.

25 Q. Okay. If you can go to Tab 12.

1                   (Exhibit 12, A document, marked for  
2                   identification.)

3                   A.     Okay.

4                   Q.     Do you recognize this document?

5                   A.     Yes.

6                   Q.     And what is it?

7                   A.     This was designed to be an  
8                   accompaniment to one of the previous exhibits in  
9                   terms of a prepopulated memo that the agency  
10                  could fill in certain information and use that  
11                  to send directly to their employees.

12                  Q.     Okay.  So, for instance, assuming  
13                  Ms. Grasso was in that HR role at the time, she  
14                  could have used -- filled in the information and  
15                  then disseminated it to the executive chamber  
16                  employees, correct?

17                  A.     Correct.

18                  Q.     Okay.  And it's your understanding  
19                  that the memorandum should have been distributed  
20                  to the executive chamber employees, correct?

21                  A.     Correct.

22                  Q.     Okay.  By the way, I can keep -- I was  
23                  planning to end at around 1:00 for lunch.  Would  
24                  you prefer that we go past 1:00?  What is your  
25                  preference?  Or if you would prefer to break

1 now, what's --

2 A. I'm -- I'm fine with continuing.

3 Q. Okay. Just let me know.

4 A. Okay.

5 Q. All right. GO -- so as we've talked  
6 about already, GOER's responsible for  
7 investigating complaints of discrimination by  
8 state agency employees, right?

9 A. Correct.

10 Q. About how many complaints does GOER  
11 receive each year?

12 A. Since 2018 I think everything that is  
13 received is roughly 17- or 1800 for all  
14 complaints.

15 Q. Okay. And do you recall -- so when  
16 you said 2018 at the beginning, is that since  
17 2018 or in the year 2018 alone?

18 A. I believe that would be if you  
19 annualize 2018 forward that would be an annual  
20 estimate.

21 Q. Gotcha. So it's approximately 17,000  
22 to 18,000 per year?

23 A. 1700 to 1800.

24 Q. Okay. So 1,700 to 1,800. Okay.

25 A. Right.

1 Q. Okay.

2 A. I think that number dips slightly  
3 during the pandemic, but -- so a little higher  
4 the year before, but that's a -- I don't have an  
5 exact number, but that's a rough estimate of the  
6 total complaints we would have received.

7 Q. Gotcha. And on an annualized basis  
8 how many complaints do you generally or  
9 approximately get from the executive chamber?

10 A. I -- I -- I don't know.

11 Q. Okay. You can't ballpark at all?

12 A. I mean, with the ones we've turned  
13 over in this, I think that that is basically  
14 what we are able to find in terms of things that  
15 have been turned over since 2018 at least. I'm  
16 not aware of any more so it's really not -- it's  
17 not a lot.

18 Q. Okay. And of the 1,700 to 1,800 you  
19 referenced earlier, how many investigations are  
20 completed?

21 A. I don't have that information.

22 Q. Does every complaint lead to a full  
23 investigation?

24 A. Every complaint is investigated. How  
25 far that investigation goes always depends on

1 the, you know, complaint and the information  
2 available to us. Not -- not all complaints wind  
3 up being complaints of protected class  
4 discrimination even though they may be  
5 characterized as such. So it really depends on  
6 that and ultimately what we know and what we  
7 find out and what we can look into.

8 Q. Gotcha. So everything is investigated  
9 or should be investigated but some are -- you  
10 know, stop shorter than others in terms of, you  
11 know, the process?

12 A. Correct.

13 Q. Okay. And this is the same for the  
14 executive chamber, correct?

15 A. Correct.

16 Q. And you've spoken with employees in  
17 the executive chamber about this obligation,  
18 correct?

19 A. About -- about what --

20 Q. Sorry, I should be more specific.  
21 Have you spoken with members of the executive  
22 chamber about the obligation that all complaints  
23 of discrimination should be directed to GOER?

24 A. I -- yes.

25 Q. Okay. And who is that you recall

1 speaking with?

2 A. I believe that when we created  
3 Executive Order No. 187 that that was a  
4 conversation that occurred that involved then  
5 counsel to the Governor Alphonso David.

6 Q. Okay. Do you recall if you ever spoke  
7 to Ms. Grasso about this obligation?

8 A. I don't recall speaking to Ms. Grasso  
9 about it.

10 Q. But you recall sending whomever had  
11 been in Ms. Grasso's role or Ms. Grasso that  
12 memorandum setting forth this obligation,  
13 correct?

14 A. I believe that the person in that role  
15 or Ms. Grasso should have got that memo, yes.

16 Q. Okay. And do you ever recall speaking  
17 with Ms. -- or do you know Jill DesRosiers?

18 A. I know who she is, yes.

19 Q. Do you recall ever speaking to her  
20 about this obligation, meaning that --

21 A. No.

22 Q. Okay. Meaning, are you saying that  
23 specifically that you did not speak to  
24 Ms. DesRosiers or that you don't recall whether  
25 or not you spoke to Ms. DesRosiers?

1           A.     I -- I don't recall ever speaking to  
2 Ms. DesRosiers about an obligation to file a  
3 complaint of protected class discrimination with  
4 GOER.

5           Q.     Okay. So I know that GOER took over  
6 the responsibility of investigating complaints  
7 in or about December 2018 and before that state  
8 agencies had an employee that would be  
9 responsible for conducting investigations,  
10 right? Sorry -- yes or no?

11          A.     Or would have one arranged for them to  
12 investigate, yes.

13          Q.     Gotcha. Now even before 2018, though,  
14 did GOER serve any role in investigations?

15          A.     Yes.

16          Q.     What role did GOER serve?

17          A.     We -- we had what was called the  
18 workforce development unit, which later became  
19 the antidiscrimination investigations division.  
20 And that workforce development unit was staffed  
21 at full staffing with three individuals who kept  
22 agency investigations on track and provided some  
23 guidance and oversight in terms of them but  
24 didn't employ the individuals or manage them on  
25 a day-to-day basis.

1 Q. Okay. And when you say guidance and  
2 oversight, did GOER, could GOER tell the agency  
3 that they were performing an investigation  
4 incorrectly and tell them to change their  
5 practices or was it merely, you know, giving  
6 advice?

7 A. They -- they -- if they -- if GOER was  
8 aware of an agency improperly investigating,  
9 they should have been told to correct their  
10 process and procedure.

11 Q. And if an agency declined to correct  
12 this policy and procedure, what would have been  
13 done -- what could GOER do to make sure that it  
14 actually complied?

15 A. If -- if -- if I was aware -- I can  
16 only speak in terms of what I would do. If I  
17 was aware of it I'd call their agency general  
18 counsel and say they needed to change how they  
19 were investigating.

20 Q. Okay. And if the general counsel  
21 said, no, we're not, what would happen?

22 A. I would go to the agency head.

23 Q. Okay. If the agency head said, no,  
24 we're not?

25 A. I would probably then go to the

1 executive chamber and say, we've got -- we have  
2 an issue, there's not a process being followed,  
3 and I'd expect. I wouldn't expect it to get to  
4 that point but theoretically that's what would  
5 happen next.

6 Q. Gotcha. Okay. Are there any  
7 exceptions to GOER's obligation to investigate  
8 complaints that are referred to it?

9 A. I wouldn't call it an exception, but  
10 if a complaint arguably would be criminal, we  
11 would not investigate that complaint initially.

12 Q. Would you ultimately investigate the  
13 complaint?

14 A. Potentially on what -- depending on  
15 what occurred, yes.

16 Q. What would it depend on?

17 A. It would depend on the status of any  
18 criminal investigation and that criminal  
19 investigation being over, and then ultimately  
20 what -- you know, what the facts of a particular  
21 complaint were.

22 Q. Okay. And when you say "over,"  
23 meaning is it your understanding that GOER would  
24 defer investigating until the criminal process  
25 had been concluded?

1           A.     Yes.  Whatever -- whatever the  
2 conclusion reached by the investigative entity  
3 would be, whether it would be that there was no  
4 criminal activity or it would result in charges  
5 and would wind its way through the criminal  
6 process, whatever that took shape for, we would  
7 not commence an investigation unless we were  
8 authorized to do so earlier.

9           Q.     Okay.  Meaning if, for instance, the  
10 criminal proceeding began after the  
11 investigation had started or after you had been  
12 informed that conduct could be investigated you  
13 would have still continued with your  
14 investigation?

15          A.     I'm not sure how that -- the unit  
16 would have handled that.  Typically when there's  
17 criminality involved, DAs and police don't like  
18 administrative investigations ongoing.  So I  
19 think we would probably strive to have some  
20 level of coordination in terms of whether we  
21 should or could go forward with the  
22 administrative part of it at that time, but that  
23 would be a case-by-case determination.

24          Q.     Okay.  And besides what you just  
25 testified to as to this criminal maybe

1 exception, are there any other sort of  
2 exceptions?

3 A. No.

4 Q. Okay. And is there any other reason  
5 GOER can decline to perform some investigation,  
6 even if not, you know, a full blown  
7 investigation?

8 A. We do get complaints filed with us  
9 that aren't employment based discrimination  
10 complaints, they are people complaining. We  
11 would -- we would decline investigation of  
12 those.

13 Q. Okay. But GOER would still assess the  
14 complaint, correct?

15 A. Correct.

16 Q. Meaning read it, see whether or not it  
17 falls within its ambit and make a determination?

18 A. Correct.

19 Q. Okay. Can -- if GOER is responsible  
20 for conducting an investigation, can the agency  
21 still conduct its own parallel investigation?

22 A. No.

23 Q. Okay. And if a agency said that they  
24 were going to start conducting their own  
25 parallel investigation, how would GOER, you

1 know, stop that?

2 A. I'd have to defer to the unit on  
3 exactly how they handle it. I wouldn't -- I  
4 wouldn't necessarily -- I might be put on notice  
5 that there's an issue there, but that unit would  
6 handle it and I think they would talk to whoever  
7 made the determination that they would  
8 independently investigate it, assuming that we  
9 were made aware of it, and then follow-up with  
10 the agency general counsel if that was  
11 unsuccessful.

12 Q. So is it your understanding that after  
13 the point GOER becomes aware of a complaint and  
14 has stated that it's investigating, the state  
15 agency should defer conducting its own  
16 investigation?

17 A. Correct.

18 Q. Okay. So I know we talked about this  
19 a little bit earlier, so when GOER gets a  
20 complaint and reviews the complaint to see  
21 whether it falls within its authority and then  
22 makes a decision as to whether it's going to  
23 investigate, correct?

24 A. Correct.

25 Q. Could you describe the investigatory

1 process?

2 A. In the disclosure documents we turned  
3 over there's a ten-step process. I would  
4 respectfully refer to that process. I'm not  
5 involved in the day-to-day investigations and  
6 wouldn't want to misspeak about the process.  
7 But there is a ten-step process that we follow  
8 to investigate complaints.

9 Q. Gotcha. And that pool of 25  
10 investigators -- or of about 25 investigators we  
11 spoke about earlier, they're supposed to follow  
12 the ten-step process, correct?

13 A. Correct.

14 Q. And, sorry, you may have said this  
15 earlier, but to whom do those investigators  
16 report?

17 A. Those investigators report up through  
18 a number of assistant counsels in the  
19 antidiscrimination investigation division and  
20 then ultimately report up through the deputy  
21 director and the director of that unit.

22 Q. Okay. And who are the deputy director  
23 and directors?

24 A. The director of that unit is [REDACTED]

25 [REDACTED] --

1 Q. Uh-huh.

2 A. -- and the deputy director of that  
3 unit is [REDACTED].

4 Q. Gotcha. And --

5 A. [REDACTED] Sorry.

6 Q. Sorry. And is there any difference --  
7 you said they report up through a number of  
8 assistant counsel. Is there any differences in  
9 what each of those assistant counsels is  
10 responsible for doing?

11 A. I think that it's more based on a team  
12 approach, so there might be numbers of employees  
13 that fall underneath the assistant counsels so  
14 that -- you know, that the workload is balanced,  
15 so to speak. Not necessarily on a individual  
16 employee by employee basis but however they've  
17 divided up the work on a team based approach.

18 Q. Okay. And what training do GOER  
19 investigators receive, meaning before they start  
20 investigating things?

21 A. I believe -- that training is handled  
22 by that unit and that unit trains all the  
23 investigators as they come on board and -- and I  
24 believe routinely has meetings and trainings  
25 where they go over things as things come up.

1 But I believe everybody at or around the time  
2 when they are onboarded receives the basic  
3 training that that unit determines appropriate.

4 Q. So sitting here today, are you aware  
5 of any specifics as to what training is provided  
6 to these investigators?

7 A. No.

8 Q. You mentioned this earlier about  
9 sometimes GOER deferring an investigation when  
10 it could be a criminal violation, correct?

11 A. Yes.

12 Q. Okay. And you testified earlier that  
13 in those instances GOER would not investigate  
14 until potentially after the conclusion of the  
15 criminal investigation, correct?

16 A. Correct.

17 Q. And if GOER receives a report that  
18 could involve potential criminal issues, does  
19 GOER report that to any law enforcement agency?

20 A. We tell the agency that they should  
21 encourage the complainant to report it to  
22 police, and that if the complainant does not  
23 that the agency needs to do it.

24 Q. Okay. And if GOER -- is there ever an  
25 instance after GOER has directed the agency or

1 encouraged the agency to report it to law  
2 enforcement, is there ever an instance that GOER  
3 would start their investigation until the time  
4 it's actually been reported to law enforcement?

5 A. If we thought it was a reportable  
6 offense we would not commence.

7 Q. Okay. And you would wait until the  
8 conclusion of the investigatory process, meaning  
9 the criminal investigatory process?

10 A. Correct.

11 Q. And you've done that in every instance  
12 that this has come up?

13 A. I -- I can't speak to every instance  
14 that's out there. I don't handle the day-to-day  
15 investigative process, so ...

16 Q. And who's responsible for making the  
17 determination as to whether particular conduct  
18 could constitute a crime?

19 A. Ultimately the police and the district  
20 attorney in terms of what's actually reported to  
21 them. This -- you know, if you're talking about  
22 something that gets submitted to GOER, there's a  
23 review process that's done, my understanding is,  
24 with the unit, which may or may not involve in  
25 every case the -- the unit head, [REDACTED].

1 But ultimately they would make a determination  
2 that they believe there's the potential of  
3 criminal conduct and then make the appropriate  
4 calls to the agency to have them do what needs  
5 to be done.

6 Q. Okay. And do you know what metrics or  
7 rules the investigators leading up to  
8 [REDACTED] use for determining what constitutes  
9 a crime? Meaning, for instance, assault could  
10 be a mere touching. So what -- what do they  
11 determine is a crime?

12 A. I don't think it's the investigators  
13 who are making that call, because ultimately the  
14 complaints are routed in centrally. I believe  
15 that that's done from the -- you know, so to  
16 speak, the central office perspective. In terms  
17 of [REDACTED] and her team I just don't know  
18 that [REDACTED] is involved in all of those,  
19 but I'm not aware of what metrics they use. But  
20 I don't think that we rest that decision with  
21 the investigators.

22 Q. Okay. And if GOER receives a  
23 complaint about conduct that's already been  
24 reported to law enforcement, what does GOER do  
25 then? Does it still defer?

1           A.     Still defers.

2           Q.     And who determines whether or not --  
3 when GOER is doing an initial assessment of a  
4 complaint, who decides whether or not it  
5 constitutes a violation that it will  
6 investigate?

7           A.     I'm sorry, Yannick, the last phrase, I  
8 missed it.

9           Q.     Sorry. I'll repeat.

10                    When GOER or an investigator is  
11 initially reviewing a complaint, who is  
12 responsible for determining whether or not there  
13 will be an investigation?

14           A.     I don't know who's technically  
15 assigned to make that final decision or how that  
16 work is parsed out.

17           Q.     Gotcha. And in terms of after an  
18 investigation, who determines whether or not  
19 there's been a violation of the state's equal  
20 employment policies?

21           A.     Ultimately it's that  
22 antidiscrimination investigation division.

23           Q.     And would they also be responsible for  
24 determining that discrimination occurred?

25           A.     That -- if it's -- they would

1 determine that it would be a policy violation of  
2 discrimination. So they wouldn't necessarily  
3 determine it's a violation of law, they would  
4 determine it's a violation of policy.

5 Q. Okay. And if they make that sort of  
6 finding that there's been a violation of policy,  
7 who decides what should be done after that?

8 A. Ultimately, in that ten-step process  
9 there is -- not only is there a conclusion on  
10 what happened, but then there is a conclusion  
11 on -- you know, assuming something -- for the  
12 sake of this question that something happened.  
13 There would be a proposed recommendation on how  
14 to handle it in terms of that action, which  
15 would then be discussed with the agency.

16 And then ultimately based on that  
17 discussion, a final determination would be  
18 rendered as to what the appropriate resolution  
19 for that complaint is in terms of action that  
20 needs to be taken.

21 Q. Okay. And who makes the final  
22 determination?

23 A. If there's not a consensus between  
24 GOER and the agency, GOER.

25 Q. Okay. And if GOER makes the final

1 determination and the agency who has voiced this  
2 agreement with that decision declines or does  
3 not do what GOER recommends, what happens?

4 A. It's my understanding that if they  
5 don't agree with the recommendation, that  
6 there's conversations with the  
7 antidiscrimination investigations division and  
8 they work out what it -- what the resolution  
9 should be. And if they can't, GOER makes its  
10 determination and expects the agency to comply  
11 with it.

12 Q. But what if the agency doesn't?

13 A. I'm not aware of it, but I think if we  
14 became aware that the agency didn't implement or  
15 take steps to implement what we did, we follow  
16 that same chain we talked about earlier. We'd  
17 call their counsel, we'd call their agency head  
18 and probably contact the executive chamber if we  
19 couldn't get a resolution.

20 Q. Okay. And let's say the executive  
21 chamber also -- or let's assume it was the  
22 executive chamber. What if they said no?

23 A. I'm not aware of that happening. I --  
24 I -- I can't really speculate on what would  
25 happen. I think it would really be fact

1 specific. But the process that we've designed  
2 and that's been in place since 2018 says that  
3 GOER, where there's a dispute about the  
4 administrative action, makes the final call.

5 Q. Understood. And I'll make it a little  
6 bit more concrete. So let's assume the  
7 executive chamber says no. Is there any  
8 mechanism outside the executive chamber that  
9 GOER could use to compel the executive chamber  
10 to follow its recommendation?

11 A. I'm not aware of anything independent  
12 that we could rely on, no.

13 MR. GRANT: Okay. I think this is a  
14 good point for our lunch break. How long  
15 would you like?

16 THE WITNESS: I guess it's going to  
17 depend on how late we're going to go  
18 tonight. We got a lot of --

19 MR. GRANT: Should we say 30 minutes,  
20 40 minutes?

21 THE WITNESS: Thirty minutes is fine.

22 MR. GRANT: Okay. Thank you.

23 THE VIDEOGRAPHER: Time now is  
24 1:06 p.m. We are going off record. This  
25 ends media unit two.

1 (Luncheon recess taken at 1:06 p.m.)

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1           A F T E R N O O N           S E S S I O N

2           (Time noted: 1:37 p.m.)

3           M I C H A E L     V O L F O R T E,       resumed  
4           and testified as follows:

5   CONTINUED EXAMINATION

6   BY MR. GRANT:

7           THE VIDEOGRAPHER: Time now is  
8           1:37 p.m. We are back on record. This  
9           begins media unit three.

10          Q.    Okay. Could you turn to Tab 15 in  
11          your binder?

12                (Exhibit 15, Procedure that all  
13          investigators in GOER are supposed to follow in  
14          terms of investigating a complaint, marked for  
15          identification.)

16          A.    15 you said, Yannick?

17          Q.    15, 1-5.

18          A.    1-5. Gotcha. Okay. I am there.

19          Q.    Okay. Take a moment to review the  
20          document and let me know when you're ready.

21          A.    I'm good.

22          Q.    Okay. And you referenced earlier in  
23          your testimony a ten-step process for  
24          investigations by GOER?

25          A.    Yes.

1 Q. And is this document -- does this  
2 document, Tab 15, reflect that ten-step policy  
3 or procedure?

4 A. Yes.

5 Q. Okay. And this is the procedure that  
6 all investigators in GOER are supposed to follow  
7 in terms of investigating a complaint?

8 A. Yes.

9 Q. Okay. Including any complaints from  
10 the executive chamber?

11 A. Correct.

12 Q. Okay. So if you look on page one, it  
13 states, "State agency shall cooperate with all  
14 such investigations and provide access to such  
15 employee's resources, files and other materials  
16 necessary for the thorough investigation of each  
17 complaint."

18 Is that true?

19 A. Correct.

20 Q. And that includes the executive  
21 chamber, correct?

22 A. Correct.

23 Q. Okay. And -- but am I correct, based  
24 on your earlier testimony -- or actually, let me  
25 add. What would GOER do if a agency, including

1 the executive chamber, did not provide access to  
2 employee's resources or files?

3 A. We'd follow similar process to what we  
4 described before. We would go to the individual  
5 to have a conversation with them. If not, we'd  
6 go to counsel. And if not, we'd go to the  
7 agency head. We would not expect it to get past  
8 counsel, though, but that would be the process  
9 we'd follow.

10 Q. And to the extent there is an impasse  
11 there may be a time where GOER does not have a  
12 mechanism for resolving the dispute, correct?

13 A. Potentially, yes, you're correct that  
14 could occur.

15 Q. Okay. And also on that page it  
16 states, "All investigations of internal  
17 complaints should be completed pursuant to the  
18 steps outlined herein within 30 days of receipt  
19 of complaint. If additional time is needed to  
20 complete an investigation due to its complexity,  
21 extensions will be granted for good cause shown,  
22 including but not limited to the unavailability  
23 of key witnesses."

24 Is that correct?

25 A. Correct.

1 Q. So am I correct that unless there's  
2 good cause, all investigations should be  
3 conducted within 30 days after GOER receives a  
4 complaint?

5 A. Correct.

6 Q. Okay. If you turn to page two, it  
7 states, "If complaint is made orally, the AAO  
8 shall encourage complainant to complete the step  
9 complaint form in complainant's own words."

10 It goes onto say, "If complainant  
11 refuses to reduce the complaint to writing, the  
12 AAO shall prepare a complaint form based on the  
13 oral reporting."

14 Is that correct?

15 A. Correct.

16 Q. And that reflects the process you  
17 outlined earlier that even if a complainant  
18 doesn't want to fill out the complaint form him  
19 or herself, that the AAO or another reporting  
20 official would complete the complaint form?

21 A. Correct.

22 Q. Okay. The policy also provides on  
23 that page that GOER may impose interim actions  
24 while an investigation is ongoing, correct?

25 A. Correct.

1 Q. What sort of interim actions could be  
2 imposed?

3 A. We could tell the agency that -- you  
4 know, if individuals were in close proximity  
5 with each other, that the individual who is the  
6 alleged wrongdoer is maybe moved to a different  
7 location. That individual could be removed from  
8 the workplace administratively or -- you know, I  
9 think that there's probably more that might fall  
10 into that bucket, but those would be the two  
11 ones that would apply, would be -- for the large  
12 part would be an actual physical removal of an  
13 individual from the workplace or separation of  
14 those individuals perhaps with direction of the  
15 individual who is the alleged wrongdoer not to  
16 communicate with the complainant.

17 Q. Gotcha. And it is GOER that's  
18 formulating these interim actions?

19 A. In consultation with the agency.

20 Q. Okay. If there's a disagreement  
21 between the agency and GOER as to appropriate  
22 interim actions, what does GOER do to resolve  
23 that dispute?

24 A. I believe we would follow a similar  
25 arc that we discussed before in terms of interim

1 actions. I'm honestly not aware of one but I  
2 think that's what -- the process we would  
3 follow.

4 Q. Gotcha. It also goes on to state on  
5 page three, but it further states, "There shall  
6 be no step taken to move or reassign complainant  
7 unless he or she requests such move or  
8 reassignment"; is that correct?

9 A. Correct.

10 Q. So an interim decision could not be --  
11 so, for instance, woman complains about sexual  
12 harassment, she can't be moved to a different  
13 division as an interim action unless she wants  
14 to?

15 A. Correct. That's what it states, yes,  
16 absolutely.

17 Q. Okay. And if we go back to page two,  
18 it states, "If the conduct alleged to have  
19 occurred could be criminal in nature,  
20 immediately discuss with GOER and state agency  
21 or authority counsel whether the actions should  
22 be referred to appropriate law enforcement for  
23 investigation prior to or in conjunction with  
24 the administrative investigation." Correct?

25 A. Correct.

1 Q. Now, you told me earlier that GOER  
2 does not investigate if it's referred something  
3 to law enforcement, right?

4 A. Yes, that was my testimony.

5 Q. Okay. But that's inconsistent with  
6 what it says here, isn't it?

7 A. It's inconsistent with the written  
8 word. I'm not sure that -- an application we  
9 investigate before it gets criminally cleared.  
10 So I -- for the policy says -- allows for it to  
11 happen, I'm not sure that we -- in practice that  
12 we investigate prior to it. Now it's -- it's  
13 always possible an investigation starts and we  
14 uncover something that is criminal and then it  
15 has to pause, but I think that that's how I  
16 would explain the disconnect between that  
17 statement and what I said earlier.

18 I think in practice we don't -- unless  
19 we clearly don't believe it's criminal after  
20 talking it out, I don't believe we proceed with  
21 an administrative investigation.

22 Q. Okay. And this is the process --  
23 actually, it goes on to state, "If a complainant  
24 or respondent is not employed by the state  
25 agency or authority," right?

1           A.    I'm sorry.  Where are you reading  
2   from?

3           Q.    Sorry.  On page two.

4           A.    Oh, yeah.  B?

5           Q.    Yes.

6           A.    Yes, it says if they're not employed  
7   by the state agency, yes.

8           Q.    Okay.

9           A.    But I would say despite that lead-in  
10   language, we would follow that even if it was  
11   the agency employee who was respondent or  
12   complainant.

13          Q.    And am I correct that it's GOER that  
14   formulated these policies to writing, right?

15          A.    Yes.

16          Q.    Is there any reason why your practice  
17   is inconsistent with your writings?

18          A.    I don't know that it is.  I would  
19   describe it as inconsistent.

20          Q.    Okay.  If you could go to Tab 17.

21                (Exhibit 17, December 2018 Complaint Form,  
22   marked for identification.)

23          A.    Yes.

24          Q.    Take a moment to review it and let me  
25   know when you're ready.

1 A. I'm ready.

2 Q. Okay. Have you -- do you recognize  
3 this document?

4 A. Yes.

5 Q. And what is it?

6 A. This is a complaint form that we  
7 promulgated in or about December of 2018 when we  
8 took over investigations of protected class  
9 discrimination.

10 Q. Gotcha. And GOER created the form,  
11 correct?

12 A. Correct.

13 Q. And this is the form --

14 A. Can I add to that?

15 Q. Sure.

16 A. I believe we probably had the  
17 technical help of the Office of Information  
18 Technology Services, but ultimately the  
19 substance of it I think was -- is ours, and we  
20 may have had expertise in making it a fillable  
21 PDF but we might have had some help from our IT  
22 folks.

23 Q. Gotcha.

24 A. Who are a separate state agency.

25 Q. Gotcha. Understood. And this is the

1 complaint form that potential complainants  
2 should use to report discrimination, correct?

3 A. Correct.

4 Q. Okay. Or somebody should use to  
5 report discrimination once it gets to GOER,  
6 correct?

7 A. Correct.

8 Q. All right. If you can turn to Tab 16.

9 (Exhibit 16, Template for how we want our  
10 investigators to write up their draft investigative  
11 reports, marked for identification.)

12 A. 16. Okay.

13 Q. Please review and let me know when  
14 you're ready.

15 A. I'm ready.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. And what is it?

19 A. This is a template for how we want our  
20 investigators to write up their draft  
21 investigative reports.

22 Q. And is it -- am I correct that GOER  
23 created this draft investigative report or  
24 investigation report?

25 A. Correct.

1 Q. And this reflects GOER's policies as  
2 to how investigations -- reports should be  
3 drafted, correct?

4 A. Correct.

5 Q. Is it GOER's policy to produce a  
6 report every time there is a complaint that's  
7 investigated?

8 A. There should be a draft investigation  
9 report. I'm not aware in practice if there is  
10 or not. I'd have to defer to that unit --

11 Q. Okay.

12 A. -- on whether there is one in every  
13 case.

14 Q. Sitting here today, can you think of  
15 any instances where a complaint, meaning -- we  
16 discussed earlier there are times where you've  
17 taken an initial look at the complaint, it  
18 doesn't pass the smell test so it doesn't fall  
19 within some violation of the policy. But to the  
20 extent a genuine investigation occurs, can you  
21 think of any instance when a report would not be  
22 rendered?

23 A. No, I cannot.

24 Q. Okay. And am I correct that the  
25 investigators create the report, meaning the

1 investigator who's investigating a particular  
2 complaint?

3 A. Correct.

4 Q. Okay. And what happens to the report  
5 after it's produced? Where does it go?

6 A. It gets sent to -- if they have a  
7 supervisor, their supervisor, and counsel I  
8 believe internally within GOER.

9 Q. Okay. And then after that?

10 A. I don't know if there's further review  
11 inside of GOER, but then I think ultimately this  
12 document and the draft legal recommendation  
13 ultimately wind up with the counsel for the  
14 agency that -- where the issue occurred.

15 Q. Gotcha. And this sort of draft  
16 investigative report, this would be rendered  
17 with respect to any complaints from the  
18 executive chamber too, correct?

19 A. Correct. This would apply to all of  
20 our investigations.

21 Q. Great. If you can turn to Tab 18.

22 (Exhibit 18, A document, marked for  
23 identification.)

24 Q. Please take a moment to review and let  
25 me know when you're ready.

1 A. I'm ready.

2 MR. GRANT: Also, I just want to make  
3 it clear on the record, any tab I've  
4 referenced today should be marked as an  
5 exhibit.

6 Q. Okay. So you referenced draft legal  
7 recommendation earlier, correct?

8 A. Correct.

9 Q. Okay. And is -- what is this  
10 document?

11 A. So this document takes the factual  
12 findings of the draft investigative report and,  
13 my term, operationalizes it in terms of  
14 ultimately what the conclusion reached is and it  
15 puts it in a form that can be transmitted to the  
16 agency for both their review of what factually  
17 we believe determined occurred and what  
18 administrative action is recommended, assuming  
19 that that's appropriate in a given case.

20 Q. Gotcha. So this along with the draft  
21 investigative drafted report are then referred  
22 to counsel for a particular agency?

23 A. Correct.

24 Q. Okay. And what happens after that?

25 A. They review, complete, it's finalized

1 and then I believe that ADID has closing letters  
2 that they send out as part of the case, and then  
3 the agency takes the administrative action and  
4 moves, you know, that -- to the extent that  
5 there's a recommendation for administrative  
6 action.

7 Q. Gotcha. Meaning the process we  
8 described earlier that if there's an impasse,  
9 GOER still makes a recommendation but there may  
10 be ultimately noncompliance that GOER cannot  
11 correct?

12 A. No, I'm assuming for this -- for  
13 the -- for my answer that there's compliance,  
14 that everybody agrees that a individual should  
15 be counseled. So then ultimately, you know,  
16 the -- whatever happens in terms of closing  
17 documents from ADID would occur, but then  
18 there's also, the agency's charged with actually  
19 physically counseling the employee who is  
20 determined that there needs to be a counsel.

21 Q. Gotcha. And if there's a disconnect  
22 between -- again, let's say GOER makes a  
23 recommendation, the agency disagrees with it,  
24 GOER stands by its recommendation and includes  
25 it in the final report and the agency refuses to

1     comply in imposing that action, what can GOER do  
2     to force the agency to enforce the action?

3             A.     We would follow that same process of  
4     trying to get compliance through their counsel  
5     and their agency head.  And ultimately, if need  
6     be, we'd go to the executive chamber.

7             Q.     And there may come a time if the  
8     executive chamber does not agree that GOER has  
9     no power, correct?

10            A.     That -- that could be a possibility,  
11     yes.

12            Q.     Before December 2020 were you aware of  
13     any allegations of potential sexual harassment  
14     against Governor Cuomo?

15            A.     No.

16            Q.     When was the first time you became  
17     aware of any allegations against Governor Cuomo  
18     or allegations of sexual harassment I should say  
19     against Governor Cuomo?

20            A.     I know that there were press reports  
21     of a former employee in December of 2020.  I'm  
22     not certain, as I sit here today, that I recall  
23     exactly what was described in those press  
24     reports.  But I think to the extent, with the  
25     benefit of hindsight, that would be how I became

1 aware that there might be anything that could be  
2 construed as a complaint of sexual harassment  
3 against the Governor.

4 Q. Okay. So before those press reports  
5 you've testified to in December 2020, or in or  
6 about December 2020, you were not aware of any  
7 other allegations of conduct that could  
8 constitute sexual harassment that had been made  
9 against the Governor?

10 A. No.

11 Q. Okay. Since December 2020 have you  
12 learned of any allegations of sexual harassment  
13 or heard about any allegations of sexual  
14 harassment against Governor Cuomo?

15 A. I've certainly heard, you know,  
16 various press reports, and certainly I have been  
17 specifically aware of the two complaints that  
18 are in writing that we turned over as part of  
19 the AG's investigation.

20 Q. And when you referenced the press  
21 reports earlier, do you recall the name of the  
22 woman, or the women I should say?

23 A. I would say specifically when, no, but  
24 I think it's the women that are described in the  
25 second subpoena as complainants from the AG that

1 we received for the production of documents.

2 Q. Okay. And that would include, for  
3 instance, Lindsey Boylan?

4 A. Correct.

5 Q. And the complaints you referenced  
6 earlier, that's a complaint from the executive  
7 chamber related to Brittany Commisso, correct?

8 A. Correct. And Alyssa McGrath?

9 Q. Sorry --

10 A. Was Ms. McGrath the other name?

11 Q. Yes. Alyssa McGrath.

12 Okay. When -- so if you recall when  
13 did you first become aware of allegations made  
14 by Ms. Boylan about the work environment in the  
15 executive chamber?

16 A. I don't recall specifically when.  
17 It's just whenever I saw the press report in and  
18 about December of 2020.

19 Q. If you can turn to Tab 19.

20 (Exhibit 19, A document, marked for  
21 identification.)

22 Q. Take a moment to review and let me  
23 know when you're ready.

24 A. Okay.

25 Q. Do you recall seeing these before?

1 A. No.

2 Q. Okay. If you can turn to tab 20.

3 Please take a moment to review and let  
4 me know when you're ready.

5 (Volforte Exhibit 20, Press report, marked  
6 for identification.)

7 A. Okay.

8 Q. Do you recall whether or not this is  
9 the press report to which you were referring  
10 earlier when you learned about allegations that  
11 were made against the governor?

12 A. I don't recall reading this press  
13 report.

14 Q. Okay. Do you recall what sort -- what  
15 the source of the press report you were  
16 referencing earlier is?

17 A. I -- I do not.

18 Q. Okay. Do you have a general  
19 understanding -- or you know Lindsey Boylan  
20 correct?

21 A. No, I don't know Lindsey Boylan.

22 Q. Sorry. I should have phrased it  
23 differently. You know of the allegations that  
24 Lindsey Boylan has made against the Governor,  
25 correct?

1           A.     I don't know all of them. I know what  
2 I've heard in part through press reports.

3           Q.     Okay. And have you -- and press  
4 reports meaning press reports beginning in or  
5 about December 2020?

6           A.     Yes.

7           Q.     Okay. Did you speak with anyone in  
8 the executive chamber about Lindsey Boylan --  
9 the allegations Lindsey Boylan has made against  
10 the Governor?

11          A.     Yes.

12          Q.     With whom have you spoken?

13          A.     I spoke with Judy Mogul.

14          Q.     Anyone else?

15          A.     No.

16          Q.     When did you speak with Ms. Mogul?

17          A.     I believe in December of 2020.

18          Q.     Do you remember when approximately  
19 during the month of December 2020?

20          A.     No.

21          Q.     And what was said?

22          A.     In a conversation the -- there was a  
23 reference made to a press report on -- that  
24 Ms. Boylan was the subject of regarding the  
25 Governor and -- but we didn't get -- we didn't

1 go into any detail.

2 Q. Anything else you recall from that  
3 conversation?

4 A. No.

5 Q. And I mean both specifically and  
6 generally.

7 A. Specifically and generally.

8 Q. Did there come a time that someone in  
9 the executive chamber asked you about whether or  
10 not it would be permissible to release portions  
11 of Ms. Boylan's personnel file?

12 A. I don't specifically recall being  
13 asked about Ms. Boylan's personal history folder  
14 and release.

15 Q. Do you recall at any time in December  
16 of 2020 being asked about potentially releasing  
17 any employees personnel records or personnel  
18 records concerning an employee?

19 A. Yeah, I remember being asked about  
20 release of personal history folders.

21 Q. Okay. Who asked you about that?

22 A. I was involved, my recollection is, in  
23 a call with Ms. Mogul and Linda Lacewell.

24 Q. Okay. And what do you recall from  
25 that conversation?

1           A.     My understanding, from a conversation  
2 with Ms. Hormozi, is -- is that either the  
3 chamber and/or those individuals claim privilege  
4 regarding that conversation.

5           Q.     And was it one conversation or  
6 multiple conversations?

7           A.     It was one conversation in December  
8 with those individuals.

9           Q.     And do you recall what, if any,  
10 explanation as to the legal advice being  
11 rendered was provided or to what legal advice  
12 you were providing or somebody was providing?

13          A.     They were asking me my opinion about  
14 whether or not a personal history folder could  
15 be released.

16          Q.     And do you recall what your advice  
17 was?

18          A.     I do.

19          Q.     And I guess what was your advice or  
20 are you going to claim privilege?

21          A.     I believe that would be the subject of  
22 the same privilege that the chamber and/or those  
23 individuals would claim.

24          Q.     Okay.

25                 MR. GRANT:   Joon, you had a question?

1 MR.KIM: Yeah. Can I ask a question?  
2 Before you were asked to and did  
3 provide your advice, were you shown any  
4 documents?

5 THE WITNESS: Not that I recall.

6 MR. KIM: Were you shown the files  
7 that they were considering releasing?

8 THE WITNESS: No.

9 MR.KIM: So they simply described or  
10 they just asked the question without  
11 showing you what the documents were that  
12 they were considering releasing?

13 THE WITNESS: Correct. We never  
14 discussed the actual documents that were  
15 being released, that I recall.

16 MR.KIM: Have you ever seen those  
17 documents?

18 THE WITNESS: No, I've never seen  
19 Ms. Boylan's personal history folder.

20 MR. KIM: Even to this day?

21 THE WITNESS: Even to this day?

22 MR. KIM: And is that how they  
23 described it, personal history folder?

24 THE WITNESS: Yes.

25 MR. KIM: And what did you understand

1           that to mean?

2                   THE WITNESS:   Every state employee has  
3           a personal history folder with relevant  
4           nonmedical documents that go in it,  
5           anything from hiring information, promotion  
6           information, if they're the subject of  
7           disciplinary action or counseling or, you  
8           know, commendation by their agency.  It  
9           would be a collection of that person's  
10          career, in part, in paper form that each  
11          agency typically maintains for its  
12          employees.

13                  MR.KIM:   For every employee?

14                  THE WITNESS:  I believe so, yes.

15                  MR.KIM:   Okay.  So you understood this  
16          to be a file that is kept generally for all  
17          employees?

18                  THE WITNESS:  Correct.  That's my  
19          understanding of personal history folders  
20          in general, yes.

21                  MR.KIM:   Did you -- so did anyone tell  
22          you that this -- the documents that were  
23          considered to be released were the product  
24          of an internal investigation conducted by  
25          counsel?

1 THE WITNESS: I don't recall anybody  
2 sharing that information with me.

3 MR.KIM: Did anyone share with you  
4 that the information, the documents being  
5 released, bore the -- the header  
6 "privileged and confidential"?

7 THE WITNESS: No.

8 MR. KIM: And bore the header  
9 "attorney work product"?

10 THE WITNESS: No.

11 MR. KIM: Did anyone tell you that  
12 they -- some of the documents constituted  
13 internal memos written by counsel for the  
14 executive chamber?

15 THE WITNESS: No, there was no  
16 discussion of actual documents. It was  
17 about personal history folders generally.

18 MR. KIM: Were there any discussions  
19 about redactions to that document?

20 THE WITNESS: Again, I was never  
21 explained or shown a document.

22 MR. KIM: And sorry, Yannick, I  
23 probably covered a bunch of the questions  
24 you were going to ask, so sorry.

25 MR. GRANT: No, no worries. I like a

1 break.

2 BY MR. GRANT:

3 Q. So you described earlier that the  
4 information in this personal history folder  
5 would exclude medical information, correct?

6 A. Correct.

7 Q. But some information in that folder --  
8 would you consider some information in that  
9 folder to be sensitive information?

10 A. You'd have to define sensitive  
11 because --

12 Q. What is your understanding of the word  
13 "sensitive" -- the meaning of the word  
14 "sensitive"?

15 A. Well, what's your explanation of it in  
16 your question, as sensitive? I mean, I think  
17 that's the relevant question is what you  
18 consider as sensitive.

19 Q. Okay.

20 A. I mean, it could -- I mean, I'll --  
21 I'll answer it generally and then, you know, if  
22 you need to follow up. You know, it could  
23 highlight things that happened in a career. So  
24 let me -- you know, the vast majority of our  
25 workforce is -- is represented and has tenure

1 rights where they can only be disciplined with  
2 notice of written charges and finding before an  
3 independent arbitrator.

4 It's possible that an individual gets  
5 brought up on disciplinary charges and there is  
6 a finding of guilt and that -- that finding of  
7 guilt contains factual findings which, depending  
8 on who was involved and what you're looking at  
9 and what the situation is, one might consider  
10 genuinely sensitive, in terms of that.

11 Other documents would be, you know,  
12 much more general. You know, Mike Volforte was  
13 promoted to X position from Y position on this  
14 date. But there -- there could be things like  
15 that that one might consider sensitive. So that  
16 would be -- that would be how I would describe  
17 potentially sensitive documents that might be in  
18 there.

19 If you had a performance evaluation  
20 and you were negatively written up in your  
21 performance evaluation, that employee might  
22 consider that sensitive. The agency might  
23 consider it factual. But that would be the two  
24 most likely things I would think would be in a  
25 personal history folder that one might view as

1 sensitive.

2 Q. Gotcha. So, for instance, let's  
3 discuss disciplinary history. That could be a  
4 part of that folder, correct?

5 A. Correct.

6 Q. And if that information were made  
7 public that could be embarrassing for an  
8 employee, correct?

9 A. Correct.

10 Q. And a future prospective employer  
11 could look negatively on an employee based on  
12 the disciplinary history, correct?

13 A. They could.

14 Q. And that could be whether or not you  
15 know, for instance, the employer finds that they  
16 did not in fact commit a violation. The fact  
17 that the facts exist in the public could still  
18 be embarrassing, correct?

19 A. Could you say that one more time,  
20 Yannick?

21 Q. Sorry, that was a bit mangled.

22 So, for instance, let's assume that  
23 there's an investigation and that there's lots  
24 of negative facts included in a report about the  
25 investigation.

1           Even if the employer ultimately  
2 concludes that there's no violation, the fact  
3 that those embarrassing facts are now public can  
4 still lead to embarrassment to that employee,  
5 correct?

6           A.     Yes, but I'm not aware that that would  
7 be in a personal history folder. I guess it  
8 could be there. But generally we'd be talking  
9 about something that was looked into and  
10 unfounded and then no action was taken.

11          Q.     Okay. But the fact alone could still  
12 lead to embarrassment, correct?

13          A.     Yeah, if the fact was -- if -- if that  
14 was in there and it was made known, yes, it  
15 could definitely lead to embarrassment.

16          Q.     And a potential employer could -- even  
17 if the employer, meaning you, found it to be  
18 unfounded, could still consider allegations that  
19 were made against this employee negatively,  
20 correct?

21          A.     Yes, that could -- that could happen.

22          Q.     Okay. And so from your prior  
23 testimony you -- I believe I recall you saying  
24 that you were not informed about the substance  
25 of any of these particular documents, correct?

1           A.     Correct.

2           Q.     So was your opinion to Ms. Mogul and  
3 Ms. Lacewell based on the idea that it would  
4 always be appropriate to release part of the  
5 personal history folder?

6           A.     No, I think we discussed the bounds of  
7 what could be disclosed generally from personal  
8 history folders without any specifics.

9                   MR.KIM: Did you ask to see the  
10 documents that they were planning to  
11 release?

12                   THE WITNESS: No.

13           Q.     If it would depend on the specifics,  
14 why would you not ask?

15           A.     I was -- I was asked a question  
16 generally on personal history folders. I was  
17 not asked about -- my recollection is I was not  
18 asked about releasing Ms. Boylan's personal  
19 history folder or anything in it.

20           Q.     Understood. My question was a bit  
21 different, though. Meaning, to the extent that  
22 your testimony suggests that there could be  
23 specifics that would bear on the ultimate  
24 decision as to whether or not parts of a  
25 personal history folder could be disclosed,

1 right?

2 A. I believe the advice that I gave  
3 encompassed that situation and what could and  
4 could not be done.

5 Q. Okay. And what is the general rule?

6 A. The -- the -- the general rule is that  
7 when we look at what's in a personal history  
8 folder, we look at it in the context of FOIL,  
9 because that's the biggest time when that might  
10 come up. And under FOIL there is a provision  
11 that permits but does not mandate withholding of  
12 documents when they are an unwarranted invasion  
13 of personal privacy.

14 Q. Gotcha. And am I correct here that  
15 there was not a pending FOIL request?

16 A. Correct.

17 MR. KIM: There was not?

18 THE WITNESS: Correct, there was not.

19 Not that -- not -- well, let me say this,  
20 not that I was made aware of or recall.

21 Q. So ultimately if there's a  
22 determination about whether or not to release  
23 part of a personnel folder, it would depend on  
24 whether or not it could be embarrassing to the  
25 employee, correct?

1           A.     It -- it would depend on whatever the  
2     releaser is determining, and they could look at  
3     the FOIL statute as instructive.

4           Q.     Is there any reason why the FOIL  
5     statute, it would be instructive in this sort of  
6     situation when there is not a FOIL request?

7           A.     As I stated earlier, that would be the  
8     context in which I -- that many employment  
9     documents come up within, and there is no --  
10    there is no general rule regarding disclosure of  
11    personal history folder. So there's nothing  
12    specific in that regard.

13          Q.     So it's at the discretion of whomever  
14    is choosing to release it, in this situation  
15    when there is not a pending FOIL request?

16          A.     Potentially, yes.

17          Q.     Potentially on what? Meaning what?

18          A.     Potentially yes, it's within their  
19    discretion and review.

20          Q.     Okay. And am I correct that you  
21    testified earlier that you were not part of any  
22    conversations about redacting parts of the  
23    personal history folder?

24          A.     Correct.

25          Q.     Okay. So if somebody testified that

1 you were in fact involved in conversations  
2 related to redaction that person would be lying?

3 A. No, but I'm not recalling that I was  
4 involved in -- so are you asking specifically  
5 about Ms. Boylan's personal history folder or --

6 Q. Yes.

7 A. -- in general?

8 Q. I'm asking about Ms. Boylan's.

9 A. Ms. Boylan, no, I was not involved in  
10 any conversation about redacting Ms. Boylan's  
11 personal history folder. If I was asked  
12 generally about a redaction of a personal  
13 history folder, to the extent that there is a  
14 document that's disclosable under FOIL but parts  
15 of it might constitute an unwarranted invasion  
16 of personal privacy, you could move around that  
17 and honor that within FOIL by redacting those  
18 parts of it. That would be the general way to  
19 handle it. But my recollection is nobody asked  
20 me about a redaction of Ms. Boylan's personal  
21 history.

22 Q. Do you recall ever being asked about a  
23 redaction by either Ms. Mogul or Ms Laceywell?

24 A. No.

25 Q. Okay.

1           MR.KIM:    Can I ask one follow-up?  And  
2           I apologize if Yannick already asked this  
3           before.  Have you ever been asked, in any  
4           other context other than Ms. Boylan, to  
5           give advice on the release of these  
6           so-called personal history folders or  
7           documents?

8           THE WITNESS:  I would say yes, I have  
9           been asked for advice on that, and it would  
10          normally come up in the context of a FOIL  
11          request and a employee who might have like  
12          a disciplinary decision in their personal  
13          history folder and how FOIL would be  
14          handled in that regard.

15          MR.KIM:  How many times have you been  
16          asked that question in the context of a  
17          FOIL?

18          THE WITNESS:  More than five.

19          MR. KIM:  Okay.  And in those  
20          instances did you approve the release of  
21          disciplinary information from their  
22          personal history folders.

23          THE WITNESS:  I wouldn't approve it or  
24          disapprove it, because it's not my agency  
25          who's responding to the FOIL request.  I

1 would simply state my understanding of the  
2 general rule involving FOIL as I understood  
3 it and the agency needs -- would need to  
4 act accordingly.

5 MR.KIM: And that general rule is  
6 what?

7 THE WITNESS: As I described before  
8 the -- in my opinion, the primary rule when  
9 it comes to FOIL requests and something in  
10 a personal history folder is whether or not  
11 disclosure is an unwarranted invasion of  
12 personal privacy. And that's where an  
13 agency -- and that's a permissible  
14 withholding, not a mandatory withholding.  
15 But if there was a concern about an  
16 unwarranted invasion of personal privacy,  
17 parts of that document could be redacted.

18 MR.KIM: That's the general rule but  
19 with respect to Lindsey Boylan you don't  
20 recall any discussions about redactions?

21 THE WITNESS: Correct.

22 MR.KIM: Any other instance where  
23 you've been asked about release of  
24 so-called personal history folders or files  
25 not in the context of FOIL?

1 THE WITNESS: No.

2 MR. KIM: So Lindsey Boylan is the  
3 only time you've been asked your views  
4 on -- on that question not in the context  
5 of a FOIL request?

6 THE WITNESS: Well, I think we're  
7 extrapolating that my general conversation  
8 was with respect to Ms. Boylan, which I  
9 understand you may have information in that  
10 regard, but from my perspective the  
11 conversation was general on personal  
12 history folders.

13 But, you know, given when that  
14 occurred and what was going on, I  
15 understand the connection. But generally  
16 speaking, other than this incident I don't  
17 recall a time when I was asked about -- by  
18 the executive chamber about a release of a  
19 document from a personal history folder.

20 MR. KIM: Or by anyone, asked by  
21 anyone absent in --

22 THE WITNESS: Absent a FOIL -- absent  
23 a FOIL request -- oh, I'm sorry. I  
24 missed -- I missed -- absent a FOIL  
25 request, no, I --

1 MR. KIM: Yeah. Yeah.

2 THE WITNESS: -- I don't.

3 MR. KIM: I think what you're saying  
4 is, the inquiry from Judy Mogul and Linda  
5 Lacewell was made not with any particular  
6 name but with general just your thoughts  
7 not in the context of FOIL, but you now  
8 piece together what -- that must have been  
9 Lindsey Boylan so that's -- that's the part  
10 you were saying?

11 THE WITNESS: Correct.

12 MR. KIM: It was asked in a general  
13 way. You didn't see the documents?

14 THE WITNESS: Correct.

15 MR. KIM: You didn't ask to see the  
16 documents?

17 THE WITNESS: Correct.

18 MR. KIM: Okay. And the substance of  
19 your advice you're -- you're withholding as  
20 privileged?

21 THE WITNESS: It's not my privilege to  
22 withhold. My understanding is, was that  
23 chamber counsel has advised that they are  
24 claiming privilege and so if they waive or  
25 it's determined it's not covered by the

1 privilege I'm more than happy to share my  
2 recollection of the specific conversation.

3 MR. KIM: Okay. Thanks, Yannick.

4 MR. GRANT: No problem.

5 BY MR. GRANT:

6 Q. And did you have any understanding of  
7 what was going to happen with -- sorry. Was it  
8 your understanding that they wanted to know  
9 whether or not they could release some part of a  
10 personal history folder?

11 A. With the benefit of hindsight, sure, I  
12 think that's a logical conclusion from that  
13 conversation.

14 Q. Gotcha. And I know you said that you  
15 never asked to see the documents, nobody showed  
16 you the documents. And I think we may have  
17 asked you this earlier but, did they convey  
18 anything about the substance of what documents  
19 they were considering releasing?

20 A. Not that I recall, and I just want to  
21 clarify, I -- I'm not exactly sure when the  
22 disclosure of whatever got disclosed with  
23 respect to Ms. Boylan occurred vis-a-vis this  
24 conversation, so I don't -- I don't know that  
25 this conversation was contemporaneous to

1 disclosure in terms of the same day, before  
2 or -- or after.

3 Q. Gotcha. Understood. And was there  
4 any discussion you recall as to whether or not  
5 this conduct could be retaliatory or considered  
6 retaliatory?

7 A. There was no discussion in that  
8 regard.

9 Q. And I know I covered this earlier that  
10 there was some -- or you testified earlier that  
11 information in a personal history folder could  
12 be embarrassing or seen negatively by a future  
13 perspective employer, correct?

14 A. Correct.

15 Q. And that could be something that would  
16 reasonably dissuade somebody from making an  
17 allegation of discrimination if he or she knew  
18 that that information could be released in  
19 response.

20 A. That is -- that's a conclusion that  
21 could be reached once one has all the facts, but  
22 yes.

23 Q. Okay. Was there a time in 2020 that  
24 you were asked to provide records concerning  
25 Ms. Boylan's equal employment trainings?

1           A.     Yes.  I don't know that it was limited  
2     to her equal employment trainings but rather a  
3     transcript of her training history, which would  
4     include that.

5           Q.     Okay.  And -- okay.  Who asked?

6           A.     I believe the request came from -- I  
7     believe it came from Ms. Grasso in the executive  
8     chamber, but I don't know, she might have  
9     communicated it through an intermediary via  
10    E-mail.  I -- I don't recall the E-mail string.

11          Q.     Gotcha.  And then Ms. Grasso explained  
12    why she was asking for these documents or why  
13    these documents were being sought?

14          A.     No, I never spoke with Ms. Grasso  
15    about why they were requested.

16          Q.     Sorry.  Whomever made this request  
17    about getting these -- the learning transcript,  
18    did they convey why they wanted the learning  
19    transcript?

20          A.     Unless it's in the E-mail string that  
21    we turned over, I'm not -- I didn't have a  
22    conversation with anybody outside of GOER about  
23    the learning transcript.

24          Q.     Gotcha.  Do you have any understanding  
25    as to why it would be necessary, whether or not

1 somebody told you?

2 A. No.

3 Q. Okay. If you can turn back to Tab 3  
4 and go to page 41.

5 A. Yes.

6 Q. And if you look right under the bolded  
7 heading "confidentiality and cooperation," it  
8 says, "All discrimination complaints and  
9 investigations will be kept confidential to the  
10 extent possible. Documentation and reports will  
11 not be disclosed, except to the extent required  
12 to implement the policies in this handbook. Any  
13 individual involved in an investigation is  
14 advised to keep all information regarding the  
15 investigation confidential. Breaches of  
16 confidentiality may constitute retaliation which  
17 is a separate and distinct category of  
18 discrimination."

19 Is that correct?

20 A. Correct.

21 Q. Okay. And is it your understanding  
22 that there was no discussion about the substance  
23 of what documents would be released from  
24 Ms. Boylan's personal history folder, correct?

25 A. That's my recollection, correct.

1 Q. But assuming that it could -- was --  
2 that part of those records that were released  
3 were disciplinary records or investigation  
4 record, could that violate this portion of the  
5 policy?

6 A. Disciplinary record, no, wouldn't  
7 violate the policy, per se. An investigation, I  
8 guess it would -- that would really depend on  
9 the context and whether or not it was to the  
10 extent possible.

11 Q. Gotcha.

12 A. In terms of a disclosure, so ...

13 Q. So if it was a disciplinary record  
14 that related to an investigation, could it  
15 violate this policy?

16 A. It's hard to answer that generally.  
17 You know, we're -- we don't publish disciplinary  
18 decisions. And in my experience, unless it's  
19 within the context of FOIL, we're not disclosing  
20 them publicly. They may be cited as good law,  
21 like when you're arguing a future disciplinary  
22 case, but -- so it's -- it's a little -- little  
23 tough to take that out of that context in terms  
24 of my career in terms of a disciplinary record.

25 Q. Sure. Let me make it a little bit

1 more concrete -- or sorry, backing up.

2           Aside from conversations you may have  
3 had with Ms. Mogul and Ms Laceywell, do you have  
4 any understanding as to what documents were in  
5 fact released to the press concerning  
6 Ms. Boylan?

7           A.     No.

8           Q.     Okay. Now, assuming that part of  
9 those records were documents concerning an  
10 investigation against Ms. Boylan for complaints  
11 that had been made against Ms. Boylan, would the  
12 release of those records potentially violate the  
13 policy?

14          A.     Potentially, yes.

15          Q.     Okay. Could you go to Tab 25.

16                   (Exhibit 25, Documents turned over in  
17 response to second subpoena, marked for  
18 identification.)

19          A.     Yes.

20          Q.     Please take a moment to review and let  
21 me know when you're ready.

22          A.     Okay.

23          Q.     Do you recognize this document?

24          A.     Yes.

25          Q.     And what is it?

1           A.     These are documents we turned over  
2 recently regarding a second subpoena for records  
3 from the attorney general regarding the  
4 investigation.

5           Q.     Gotcha. And this is an -- including  
6 an E-mail you referenced earlier about being  
7 asked for Ms. Boylan's learning transcript,  
8 correct?

9           A.     Correct.

10          Q.     Okay. And if you look at page  
11 three -- well, I guess they're not all numbered,  
12 but the third page of this exhibit.

13          A.     Third page, gotcha. Okay.

14          Q.     Okay. And at the top it states, in an  
15 E-mail from you to Lauren Grasso, this is --  
16 "This is something my staff will have to do.  
17 Are you okay with that? They are discreet but I  
18 have to have them do it."

19                   Why do you say that?

20          A.     One, sometimes people assume that I  
21 have the ability to do more than I do, and so if  
22 they thought I was going to be the one pulling  
23 this record, that I would not be the one. And  
24 my recollection is, is I clearly knew that the  
25 press stories at this point -- or there had been

1 at least a press story about Ms. Boylan in  
2 general, and I was simply saying, you know, my  
3 staff aren't ones to gossip, but if that's a  
4 concern, you know, then we're not going to pull  
5 this. So ...

6 Q. What do you mean when you say "we're  
7 not going to pull this"?

8 A. If -- if they, one, wanted me to be  
9 the one to pull this and send it to them, I  
10 don't have that ability; and, two, if there was  
11 a concern with having anybody else do it, we  
12 wouldn't have been able to satisfy their  
13 request.

14 Q. Why don't you have that ability?

15 A. I don't oversee anything with regard  
16 to the administration of our online training  
17 system.

18 Q. But it does fall under GOER's  
19 responsibilities, correct?

20 A. It falls under GOER but not mine  
21 personally.

22 Q. Okay. So somebody else within GOER,  
23 meaning a member of your staff, could get these  
24 records, correct?

25 A. Correct. And that's what I was

1 referring to in this E-mail about --

2 Q. And what -- sorry. And what is your  
3 understanding as to why they would need to be  
4 discreet?

5 A. It's solely a reference to the fact  
6 that there was a press story which was  
7 well-known and out there, at least in my opinion  
8 was -- was known, and that my staff would see  
9 the request with the same name and might talk  
10 amongst themselves. And if that was a concern,  
11 you know, and it had been expressed to me, I  
12 would have said simply, get the training  
13 record -- you'll have to get the training  
14 records through another means.

15 But that did not occur, so that --  
16 that's the -- that's the only reference or  
17 meaning that I ascribed to discreet in terms of  
18 that.

19 Q. Did you have any understanding as to  
20 there being a concern that it would be  
21 inappropriate to be digging up information about  
22 Ms. Boylan after she had made the complaint?

23 A. No.

24 Q. Okay. Do you usually confer with  
25 Ms. Grasso or people who work for Ms. Grasso

1 concerning getting access to these sort of  
2 learning transcripts?

3 A. I -- I don't remember dealing with  
4 Ms. Grasso on an occasion of a transcript prior  
5 to this. There may have been a prior request,  
6 but I -- I don't -- I don't recall one for a  
7 different employee.

8 Q. Okay. And do you have any insight or  
9 understanding as to why Ms. Grasso and people in  
10 her staff were requesting this learning  
11 transcript?

12 A. Only by looking at the E-mail string  
13 below.

14 Q. So you had no other conversations with  
15 Ms. Grasso or anyone else in the executive  
16 chamber as to this learning transcript?

17 A. Correct.

18 Q. Okay. Did you ask?

19 A. No.

20 Q. Why not?

21 A. I -- I didn't ask.

22 Q. Okay. Has anyone -- has anyone else  
23 in the executive chamber asked you to look up  
24 materials concerning Ms. Boylan, any other  
25 materials?

1 A. No.

2 Q. After the discussions we've already  
3 had with Ms. Mogul and Ms. Lacewell, were you  
4 part of any other discussions about the release  
5 of documents in Ms. Boylan's or any other  
6 employees personal history folder?

7 A. Not -- not a specific conversation,  
8 no.

9 Q. What do you mean when you say  
10 "specific conversation"?

11 A. Specific employees.

12 Q. Okay. Have you had any other  
13 conversations about releasing information from  
14 personal history folders since the conversation  
15 we just discussed?

16 A. Yes.

17 Q. What -- with whom were you speaking?

18 A. I spoke to Linda Lacewell in March of  
19 2021.

20 Q. Okay. And what was discussed?

21 A. Again, my recollection is a general  
22 conversation about release of personal history  
23 folders and it's my understanding the chamber is  
24 claiming that that -- and/or the employees are  
25 claiming that that conversation on that subject

1 is privileged.

2 Q. Okay.

3 A. And again, I just want to state for  
4 the record, I'm the attorney, it's their claim  
5 of privilege. If they waive it or it's  
6 otherwise determined, I'm more than happy to  
7 disclose what was discussed.

8 Q. No. I get it. Mitra Hormozi said to  
9 do it, not you.

10 All righty. Did anyone --

11 A. Can you -- can you repeat what you  
12 said, Yannick, about Ms. Hormozi?

13 Q. Sorry, I shouldn't just say  
14 Ms. Hormozi, it was counsel for the chamber that  
15 directed you to invoke the privilege, meaning if  
16 they're privileged, they're invoking it, and  
17 because you cannot waive their privilege you're  
18 not going to give us that?

19 A. Correct. Yes, thank you. I just  
20 wanted to -- I just wanted to make sure I -- I  
21 understood what -- what you were communicating.  
22 So thank you, appreciate that.

23 Q. Not a problem.

24 All right. Did anyone ask you to  
25 provide a comment to the press regarding the

1 release of information pertaining to Ms. Boylan  
2 to the press or to the public?

3 A. I -- can you -- can you repeat the  
4 question again, Yannick? I want to make sure I  
5 get it right.

6 Q. No problem. I asked, has anyone asked  
7 you to give a comment to the press about the  
8 release of personal information in a personal  
9 history folder related to Ms. Boylan or any  
10 other employee?

11 A. Yes, in the context of -- of what I  
12 knew was going on in the press, I was asked  
13 about a comment I believe about the release of  
14 personal history folders in general.

15 Q. Gotcha. Who asked you or who did you  
16 discuss that comment or that potential press  
17 comment with?

18 A. That -- that I don't -- that I don't  
19 recall.

20 Q. Okay. If you can turn to Tab 26.  
21 (Exhibit 26, A document, marked for  
22 identification.)

23 A. Okay.

24 Q. Take a moment to review it and let me  
25 know when you're ready.

1           A.     Okay.

2           Q.     Okay.  If you go to the bottom of the  
3 second page in a part that's -- appears to be a  
4 little bit highlight -- it's the penultimate  
5 paragraph.  And it states, "As a general matter,  
6 it is within a government entity's discretion to  
7 share redacted personnel records with certain  
8 limited exceptions, including in instances when  
9 members of the media ask for -- ask for such  
10 public information and when it is for the  
11 purpose of correcting inaccurate statements made  
12 in the press, as was the case in this situation  
13 as it related to the circumstances surrounding  
14 Ms. Boylan's departure.

15                   "Given the ongoing review by the state  
16 attorney general, we cannot consider sharing of  
17 any documents by this time and cannot comment  
18 further at this moment."

19                   It says that, correct?

20           A.     Yes.

21           Q.     And if you look above that, and it  
22 says, "My recommendation is to break it up and  
23 have the first part from Mike Volforte, if he  
24 would be willing, and that the second part from  
25 the chamber."  Correct?

1           A.     Correct.

2           Q.     Okay.  Did you have any conversations  
3 about this comment, whatever the first part and  
4 their determination would be, being attributed  
5 to you?

6           A.     I believe I did.

7           Q.     And when do you recall having that  
8 conversation?

9           A.     I -- I think it would be on or about  
10 the date indicated in that E-mail on or about  
11 March 9th, I believe.

12          Q.     And do you recall now or does this  
13 refresh your recollection as to whom you spoke  
14 about making a statement to the press?

15          A.     I -- I'm -- I'm uncertain if this --  
16 this might have also been part of the  
17 conversation with Ms Lacewell, but I don't know  
18 if there was another conversation or not.

19          Q.     Gotcha.  Meaning --

20          A.     No.  I shouldn't say I don't know.  I  
21 don't recall if there was or not, but I'm --  
22 believe I may have spoke with Ms. Lacewell about  
23 at least part of that statement.

24          Q.     Okay.  And meaning the conversation  
25 you referenced earlier with Ms. Lacewell that

1 the executive chamber has asserted privilege  
2 over, correct?

3 A. Correct.

4 Q. And you cannot recall whether or not  
5 there was any other separate conversation  
6 concerning attribution or a press statement  
7 outside of that conversation with Ms. Lacewell?

8 A. I -- I -- I don't recall who a  
9 conversation with attribution was about.

10 Q. Gotcha. Did anyone ask if -- if you  
11 would be willing to sign on to any sort of  
12 similar statement to the press?

13 A. I -- I believe I was asked if I would  
14 issue or have this attributed to me, at least in  
15 part.

16 Q. Uh-huh.

17 A. And I said no, that that would not be  
18 something I would normally do.

19 Q. Okay. Why not?

20 A. Generally don't make statements to the  
21 press, and I was personally uncomfortable with  
22 having this -- this statement attributed to me,  
23 especially in my opinion since it had been  
24 discussed about not commenting in the press, by  
25 the executive chamber.

1 Q. Okay. What comment are you referring  
2 to about not commenting to the press?

3 A. I believe at some point in time in the  
4 close proximity there was a statement about, you  
5 know, an acknowledgment of what was going on,  
6 and -- in terms of accusations, and there was  
7 a -- somebody made a statement about we're not  
8 going to comment any further.

9 Q. Okay.

10 A. And I was, for the purposes of my  
11 thought process, adopting that as a reason why I  
12 would not be comfortable in having a statement  
13 attributed to me.

14 Q. Any other reason you were  
15 uncomfortable?

16 A. No.

17 Q. Is there anything in this statement  
18 that you consider to be inaccurate?

19 A. I would say I can't comment on the  
20 accuracy or the inaccuracy about -- as was the  
21 case in this situation as it related to  
22 circumstances surrounding Ms. Boylan's  
23 departure, but the rest of it appears accurate.

24 Q. So was your concern about attribution  
25 related to attribution with respect to

1 Ms. Boylan?

2 A. I don't think it was about Ms. Boylan.  
3 I think it was about making a statement about  
4 matters that were either in process of being  
5 investigated, potentially being investigated or  
6 were going to be maybe, perhaps, referred for  
7 investigation.

8 Q. All right. We discussed earlier  
9 Brittany Commisso, correct?

10 A. Correct.

11 Q. And you're aware of allegations that  
12 Ms. Commisso has made against Governor Cuomo,  
13 correct?

14 A. Correct.

15 Q. How did you first learn about  
16 Ms. Commisso's allegations?

17 A. I believe there was -- I don't recall  
18 if I learned of the allegations independently of  
19 the report -- oh no, sorry, the report. The  
20 complaint that was filed in March of 2021.

21 Q. Okay. Do you recall --

22 A. By -- by "independently," I don't mean  
23 from a member of the administration. I don't  
24 recall if there was a press report that -- that  
25 had happened, and then -- then I -- then I got

1 information from folks in the executive chamber  
2 and -- so I'm just not recalling that time --  
3 that timeline, so ...

4 Q. Okay. Do you recall if you spoke with  
5 anyone before or after that complaint was filed  
6 with GOER?

7 A. Yes.

8 Q. Sorry. First, let's turn to Tab 27.

9 (Exhibit 27, Complaint GOER received on or  
10 about March 15 which we turned over as part of the  
11 AG's investigation, marked for identification.)

12 Q. Take a moment to review the document  
13 and let me know when you're ready?

14 A. Yes.

15 Okay.

16 Q. Okay. Is this -- do you recognize  
17 this document?

18 A. Yes.

19 Q. What is it?

20 A. This is a copy of a complaint GOER  
21 received on or about March 15 which we turned  
22 over as part of the AG's investigation.

23 Q. Okay. And this complaint -- and the  
24 complaint here is one you referenced earlier  
25 related to allegations involving Ms. Commisso,

1 correct?

2 A. Correct.

3 Q. Okay. All right. Before or after  
4 this complaint was sent to you from Beth Garvey,  
5 do you recall having any conversations with  
6 Ms. Garvey or anyone else concerning  
7 Ms. Commisso's allegations?

8 A. I believe I spoke to Ms. Mogul and  
9 Ms. Garvey earlier that day.

10 Q. Okay. And what was -- and that day  
11 meaning March 15, 2021?

12 A. Correct.

13 Q. Okay. And what was discussed during  
14 that conversation?

15 A. They started the conversation by  
16 informing me that they were aware of an employee  
17 complaint that had been orally transmitted to  
18 individuals in the chamber involving the  
19 Governor, and it involved -- I don't know if  
20 they used the word "touching" or "groping," but  
21 they clearly indicated that -- some allegation  
22 that the Governor had touched an employee of the  
23 chamber inappropriately was made.

24 Q. Anything else you recall about that  
25 conversation?

1           A.     In that conversation they indicated  
2     that they knew they had to file a complaint and  
3     were calling me to see what else they needed to  
4     do in addition to filing the complaint.

5           Q.     Do you recall anything else they said?

6           A.     That they said?  In the -- we -- we  
7     talked about in the context of those additional  
8     things that they may need to do when they use  
9     the word "groping" or "touching."  I immediately  
10    said, you know, in terms of complaints that are  
11    referred to GOER there potentially is an  
12    additional step that you need to take.

13                   And I cited an example of, if there's  
14    an allegation of a female employee and a male  
15    employee and the male employee reached under a  
16    female employee's shirt and touched the woman's  
17    breast, you need to make a referral to -- or  
18    not -- there needs to be a referral made to the  
19    police because that's potentially a crime.

20                   I believe Ms. Mogul indicated that  
21    that was the nature of the allegation that we  
22    had here.  I then described that the first thing  
23    that you should do is see if the employee would  
24    make a police referral, and if not they should  
25    make the police referral.

1 Q. Okay. Anything else they said?

2 A. They might have asked if they should  
3 file with us before or after making that  
4 referral. I -- I don't recall that they did.  
5 I -- I have some recollection that they -- they  
6 did. I said, you know, the referrals should  
7 happen as soon as possible and they can make the  
8 complaint to us, give the complaint to us soon  
9 thereafter.

10 Q. Okay. And anything else you recall  
11 that you said during this conversation?

12 A. I think I indicated that we would not  
13 investigate until we were made aware that the --  
14 in -- in -- in -- in the normal course of  
15 business until the -- given the okay by whatever  
16 law enforcement body was investigating this.

17 Q. Okay. Anything else you recall you  
18 said?

19 A. No.

20 Q. Okay. Do you have any  
21 understanding -- has GOER begun this -- an  
22 investigation in to the complaint set forth in  
23 Tab 27?

24 A. No.

25 Q. Why not?

1           A.     Because matters referring sexual  
2 harassment and allegations against the Governor  
3 have been referred to the attorney general's  
4 office and we're not going to conduct an  
5 investigation at the same time the attorney  
6 general's office is going to conduct it.

7           Q.     What is the basis for that exception?

8           A.     The basis for that exception is, is  
9 our determination that it -- it makes literally  
10 no sense to have us investigating at a time when  
11 people are making complaints and giving  
12 information to the attorney general's office and  
13 they've been empowered to investigate this.

14          Q.     Has GOER taken any steps in relation  
15 to this complaint? Or any actions I should say,  
16 not any such steps, any actions?

17          A.     No.

18          Q.     Okay. So I'm assuming no one's been  
19 assigned to investigate the complaint?

20          A.     Correct.

21          Q.     Okay. And do you know whether or not  
22 Ms. Mogul or Ms. Garvey has in fact reported  
23 substance in this complaint to law enforcement?

24          A.     Not from Ms. Mogul or Ms. Garvey, but  
25 I believe I'm aware of a press report that

1 ultimately this got referred to the Albany City  
2 Police. I think via the state police.

3 Q. Okay. During your conversation with  
4 Ms. Garvey and Ms. Mogul, was there any  
5 discussion as to whether or not GOER would be  
6 performing any investigations during the  
7 pendency of the independent investigation by the  
8 attorney general?

9 A. That might have been discussed in  
10 terms of them having reached out, and Ms. Garvey  
11 I believe I recall saying that there was --  
12 somebody had said we should follow our normal  
13 process.

14 Q. Okay. So the normal process being  
15 that the complaint would still be filed with  
16 GOER, correct?

17 A. Correct.

18 Q. And -- but it's not the normal process  
19 that GOER would then sit on the complaint,  
20 right, typically in the normal course GOER would  
21 investigate, right?

22 A. For this complaint we would wait to  
23 see if there was going to be a criminal  
24 investigation or not, and if that was -- if  
25 there was, whether it was concluded or not.

1 Q. Okay. Meaning a criminal  
2 investigation by the -- like law enforcement or  
3 by us?

4 A. By law enforcement. And I would also  
5 say that I -- this is not the normal situation.  
6 I mean, this -- it's been referred to the  
7 attorney general, so I think it would be  
8 imprudent for us to commence an investigation  
9 when the attorney general is investigating the  
10 same thing.

11 Q. Understood. When did you reach a  
12 determination as to the prudence of whether or  
13 not to conduct an investigation in light of the  
14 pending investigation by the attorney general?

15 A. I think [REDACTED] and I may have had  
16 a discussion soon after we received this  
17 complaint.

18 Q. Okay. The investigation or the  
19 attorney general's investigation was announced  
20 prior to March 15, 2021, correct?

21 A. I -- I don't -- I don't know the date.

22 Q. Okay.

23 A. If you'll give me the date I'll  
24 confirm it, but I -- I don't recall off the top  
25 of my head when it was referred.

1 Q. Not a problem. But it's your  
2 recollection that you did not reach a  
3 determination as to whether or not you would  
4 investigate until after this complaint from --  
5 concerning Ms. Commisso had been filed?

6 A. It was after the complaint was filed  
7 and after certainly we were aware that it had to  
8 be referred to law enforcement and after we were  
9 aware that the attorney general had -- that  
10 there -- that allegations of sexual harassment  
11 had been referred to the attorney general.

12 Q. Gotcha. And when you -- when you say  
13 that the matter being referred to law  
14 enforcement, that relates to the policies we  
15 discussed earlier, correct?

16 A. Correct. Where -- where appropriate,  
17 based on the initial facts, if it looks like a  
18 criminal matter, the referral to police.

19 Q. And our colloquy earlier about whether  
20 or not the practice of GOER is inconsistent with  
21 the written policy, correct?

22 A. Correct.

23 Q. Okay. All righty. Do you recall if  
24 there was any discussion with members of the  
25 executive chamber, including Ms. Garvey and

1 Ms. Mogul, about whether or not you were  
2 intending to investigate in light of the  
3 attorney general's investigation?

4 A. I don't know that I had that  
5 discussion with them other than them at some  
6 point relaying back to me that they had made an  
7 outreach to the investigators and communicated  
8 to me that they were told that we could proceed  
9 as normal, I think was what was communicated to  
10 me. And despite that communication, I made the  
11 determination we wouldn't be investigating this  
12 while the attorney general was investigating.

13 Q. Okay. Okay.

14 MR. GRANT: Now is a good time. Let's  
15 take five.

16 THE VIDEOGRAPHER: Time now is  
17 3:01 p.m. We are going off record. This  
18 ends media unit number three.

19 (Short recess taken.)

20 THE VIDEOGRAPHER: Time now is  
21 3:08 p.m. We are back on record. This  
22 begins media unit four.

23 Q. Okay. All right. Did you recall, did  
24 you ever tell anyone that you would not be  
25 investigating -- before your independent

1 determination, that you would not be  
2 investigating Ms. Commisso -- the complaint  
3 involving Ms. Commisso? Did you have any  
4 conversations with anyone in the executive  
5 chamber informing them that you would not be  
6 moving ahead with an investigation because it  
7 constituted a potential crime?

8 A. Because it constituted a what?

9 Q. Potential crime.

10 A. I -- I don't recall that I -- if I  
11 relayed that to Ms. Mogul or Ms. Garvey during  
12 that conversation.

13 Q. Gotcha. Could you take a look at  
14 Tab 28.

15 (Exhibit 28, E-mail from Ms. Garvey to  
16 Steve Cohen, marked for identification.)

17 A. Yes.

18 Q. Take a moment to review that and let  
19 me know when you're ready.

20 A. Okay.

21 Q. You haven't seen this document before,  
22 correct?

23 A. Correct.

24 Q. Okay. And it's an E-mail from  
25 Ms. Garvey to Steve Cohen. But if you look at

1 the last paragraph, it states, "This is a crime.  
2 So if reported this way to GOER, they would say  
3 this, this is conduct which constitutes a crime  
4 and needs to be reported to law enforcement and  
5 we will take your report and hold it in abeyance  
6 until they pursue or conclude their  
7 investigation."

8 Do you recall whether or not that's  
9 advice or information you relayed to Ms. Garvey?

10 A. I believe that it would be.

11 Q. Okay. And this is dated March 10,  
12 2021, correct?

13 A. Correct.

14 Q. That's five days before the complaint  
15 from Ms. Commisso reached -- they sent the  
16 complaint involving Ms. Commisso, correct?

17 A. Correct.

18 Q. Okay. And -- and there's no statement  
19 in there as to the pendency of the attorney  
20 general's investigation, right?

21 A. Correct.

22 Q. Okay. All right. And let's assume  
23 that the law -- sorry. Has GOER been checking  
24 in as to the pendency of the current law  
25 enforcement investigation involving

1 Ms. Commisso's allegations?

2 A. I -- I have not. I don't know if  
3 anybody else has.

4 Q. Okay. And when -- why isn't somebody  
5 checking?

6 A. We just haven't -- I -- I haven't  
7 checked, and as I stated before, while the  
8 attorney general's investigation is ongoing,  
9 we're not going to investigate.

10 Q. Gotcha. All right. Did there come a  
11 time that somebody requested that you send them  
12 Ms. Commisso's learning transcript?

13 A. I -- I don't recall that, that that  
14 happened, but it's possible.

15 Q. Okay. Can you turn to Tab 29?

16 (Exhibit 29, E-mail to Lauren Grasso dated  
17 March 10, 2021, marked for identification.)

18 A. Sure.

19 Q. Take a moment to review it and let me  
20 know when you're ready.

21 A. Okay.

22 Q. Okay. And that's an E-mail from you,  
23 correct, to Lauren Grasso?

24 A. Correct.

25 Q. And it's dated March 10, 2021?

1 A. Correct.

2 Q. So again, five days before there was  
3 ever a complaint filed with you?

4 A. Yes.

5 Q. And in this E-mail you're attaching a  
6 document titled "SLMS learning transcript  
7 Commisso" and a -- ending figure for an Excel  
8 sheet, correct?

9 A. Correct.

10 Q. Okay. And if you look at the next  
11 page, that's Ms. Commisso's learning transcript,  
12 correct?

13 A. Correct.

14 Q. Okay. Why were you sending Ms. Grasso  
15 Ms. Commisso's learning transcript?

16 A. My belief would be is that she must  
17 have requested it, and my prior search for  
18 documents did not yield that this came up but  
19 I'll go back and relook at it and see if I can  
20 uncover if I have a written request.

21 Q. Why were the documents being  
22 requested?

23 A. I don't recall, as I sit here today.

24 Q. Okay. And you had been asked a couple  
25 months earlier to give the records --

1 Ms. Boylan's learning transcript, correct?

2 A. Correct.

3 Q. Okay. Do you -- why do you -- or  
4 sorry. Did you ask why they were asking for  
5 this information that related to Ms. Commisso?

6 A. I didn't even recall that I had  
7 supplied the records so I can't -- I can't. But  
8 as I sit here today, I don't know that I did.

9 Q. Okay. Do you have any understanding  
10 as to why this information would be necessary to  
11 Ms. Grasso or the executive chamber?

12 A. No.

13 Q. Okay. And in this instance you're the  
14 one sending Ms. Commisso's transcript, correct?

15 A. Correct.

16 Q. And you had testified earlier that  
17 that's not information that you are privy to in  
18 your capacity as the director, correct?

19 A. Correct.

20 Q. Okay. So somebody else in your staff  
21 had to relay this information to you, right?

22 A. Correct.

23 Q. Okay. And do you recall what  
24 instructions you gave them as to collecting this  
25 information concerning Ms. Commisso?

1           A.     No, I'll have to go back and see if I  
2     have a written communication in my staff in this  
3     regard and what I got.   And I apologize for the  
4     oversight.   I didn't even recall this.

5           Q.     Not a problem.   I just would advise  
6     you that to the extent you're going back, you  
7     make sure to produce, you know, everything  
8     related to communications with the executive  
9     chamber about any of these people --

10          A.     Of course.

11          Q.     -- meaning any of the women who have  
12     complained.

13          A.     My search didn't turn this over, so  
14     I -- I will go back and -- you know, we're still  
15     responding to that second subpoena request,  
16     so ...

17          Q.     Understood.   Has anyone -- do you  
18     recall anyone else in the executive chamber  
19     asking you for materials related to  
20     Ms. Commisso?

21          A.     No, I don't believe I was asked for  
22     other materials.

23          Q.     All right.   Are you aware of  
24     allegations Alyssa McGrath has made concerning  
25     the Governor?

1           A.     Yes.

2           Q.     Okay.  And when did you become aware  
3 of the allegations Ms. McGrath has made  
4 concerning the Governor?

5           A.     They were communicated to me in a --  
6 well, I had a conversation with Ms. Garvey in  
7 April regarding those allegations.

8           Q.     Okay.  And is that the first time you  
9 learned of those allegations?

10          A.     There might have been a preceding  
11 press report that I saw, but I'm not certain.  
12 But I know for sure that Ms. Garvey and I spoke  
13 about that there were more allegations and I  
14 believe she referenced Ms. McGrath's name.

15          Q.     Gotcha.  Do you recall what was said  
16 during that conversation?

17          A.     We discussed I believe the nature of  
18 the allegations.  I don't specifically recall  
19 what Ms. Garvey told me they were.  Sorry.  I  
20 don't recall what Ms. Garvey told me they were  
21 but we talked about it because we did not get  
22 into the conversation about a police referral  
23 being needed, so it didn't appear what they were  
24 talking about was criminal.

25                   So, we -- you know, Ms. Garvey knew

1 that they were to be reported, and we discussed  
2 that they should approach the employee who I  
3 believe they disclosed was represented by  
4 counsel and ask the employee who, if they would  
5 file a complaint with GOER. And if they didn't,  
6 then the complaint would be, then Ms. Garvey  
7 should file the complaint.

8 Q. Okay. Anything else you recall  
9 Ms. Garvey saying during this conversation?

10 A. I believe we talked about how long  
11 they should wait. I don't think I gave her an  
12 answer at that time. And then I think about a  
13 week later the complaint was actually forwarded  
14 to GOER.

15 Q. Okay. And what do you recall you  
16 saying during this conversation with Ms. Garvey?

17 A. I communicated that they should give  
18 the employee the form and the option to file her  
19 own complaint with GOER. And then I told  
20 Ms. Garvey if that didn't happen, Ms. Garvey  
21 should file the complaint with GOER.

22 Q. Gotcha. And you understood that this  
23 complaint or complaint -- potential complaint at  
24 that point related to allegations concerning the  
25 Governor, correct?

1 A. Correct.

2 Q. And this was in April, correct?

3 A. Correct.

4 Q. And you testified earlier that you had  
5 come to a determination at some point in March  
6 that you would not be conducting any  
7 investigations during the pendency of the  
8 attorney general's investigation, correct?

9 A. Correct.

10 Q. Why would you tell Ms. Garvey to send  
11 or that she may have to file a complaint with  
12 GOER if GOER wasn't going to do anything?

13 A. Because eventually the attorney  
14 general's investigation would be over and we  
15 would be taking action. And her obligation is  
16 to file the complaint with us. And whether or  
17 not we have the complaint or not, we wouldn't be  
18 moving forward.

19 Q. Okay. So when an -- when the attorney  
20 general issues a report in this matter, it's  
21 your understanding that GOER would then conduct  
22 an investigation?

23 A. Correct.

24 Q. Okay.

25 A. I think that's our obligation under

1 our policy.

2 Q. Gotcha. And there came a time that  
3 you received a complaint concern Ms. McGrath,  
4 correct?

5 A. Correct.

6 Q. Can you turn to Tab 30.

7 (Exhibit 30, Complaint related to Ms.  
8 McGrath, marked for identification.)

9 Q. Please review it and let me know when  
10 you're ready.

11 A. I'm ready.

12 Q. And is this the complaint which you  
13 referred to earlier concerning the allegations  
14 related to Ms. McGrath?

15 A. Correct.

16 Q. Okay. And what do you know about  
17 Ms. McGrath's allegations, since in the form all  
18 it says is -- provides a link to a New York  
19 Times article?

20 A. I don't recall what Ms. McGrath's  
21 allegations were -- or, sorry, were. Are,  
22 excuse me.

23 Q. Gotcha. And am I correct that GOER  
24 has not conducted or started to conduct an  
25 investigation into Ms. McGrath's complaint?

1 A. Correct.

2 Q. And am I correct that GOER has not  
3 taken any actions beyond receiving the  
4 complaint?

5 A. Correct.

6 Q. And am I correct that no one has been  
7 assigned to investigate this complaint?

8 A. Correct.

9 Q. Okay. But I'm correct that assuming  
10 that when the report by the AG is issued, that  
11 at that point GOER would conduct an  
12 investigation?

13 A. Correct.

14 Q. That should conclude within 30 days?

15 A. Unless extended by --

16 Q. Unless extended for good cause?

17 A. I think, from what I know about your  
18 investigation, our investigation, we'll -- we'll  
19 be reaching out for information to you all for  
20 our investigation.

21 Q. Perhaps. All right.

22 Do you know who [REDACTED] is?

23 A. Yes.

24 Q. Who is he?

25 A. [REDACTED] was an individual who

1 worked for I believe he was a Department of  
2 State employee but he was assigned to the  
3 chamber and he was a subject of a complaint of  
4 discrimination that was investigated.

5 Q. Gotcha. And when you say  
6 "discrimination," did it include complaints  
7 concerning sexual harassment?

8 A. I believe that it did.

9 Q. And GOER conducted an investigation  
10 based on those allegations, correct?

11 A. No.

12 Q. GOER did not?

13 A. I believe GOER arranged for a AAO of  
14 another agency because that was under the prior  
15 process.

16 Q. Gotcha.

17 A. I think that was a -- pre  
18 December 2018 complaint, so that would be when  
19 AAO's were assigned to other agencies. And I  
20 believe we arranged for an AAO from another  
21 agency to investigate that complaint.

22 Q. Gotcha. Gotcha. And do you recall  
23 how that complaint came to GOER's attention?

24 A. I believe that information's in the  
25 disclosure materials. I think we got -- I

1 believe we got it from somebody in the executive  
2 chamber.

3 Q. Okay. Do you recall if it was Jill  
4 DesRosiers?

5 A. That sounds right, but I -- I -- I'm  
6 not looking at the document so I -- I -- but  
7 that sounds correct.

8 Q. Okay. And when you said that the AAO  
9 for that agency investigated, GOER was still  
10 providing oversight and direction to that AAO,  
11 correct?

12 A. Correct. Making -- making sure the  
13 investigation got done according to the process.  
14 Absolutely.

15 Q. So if you turn to Tab 31.

16 (Exhibit 31, Part of investigative file  
17 against ██████████ marked for identification.)

18 A. 31.

19 Q. Take a moment to review and let me  
20 know when you're ready.

21 A. Okay.

22 Q. Okay. Do you recognize this document?

23 A. Other than as being part of the  
24 disclosure we made, no.

25 Q. Okay. Do you have any reason to doubt

1 that this is part of the investigative file  
2 concerning the person who made allegations  
3 against [REDACTED] ?

4 A. No.

5 Q. Okay. All right. And in reviewing  
6 the allegations that were made against

7 [REDACTED] they included, among other things,

8 that [REDACTED] [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] correct?

14 A. I missed [REDACTED], but I -- you  
15 know, I see the other things you referenced.

16 I'm just not seeing [REDACTED], but I'm not  
17 disputing --

18 Q. Gotcha.

19 A. -- that it's there. I just didn't see  
20 it in the same paragraph as some of the other  
21 things you referenced, so ...

22 Q. Understood. I want to focus your  
23 attention on the allegation concerning [REDACTED]

24 [REDACTED] That's in there, correct?

25 A. Can you refer me to the specific

1 paragraph?

2 Q. Sure. Give me a second. I should get  
3 better about ...

4 MR. GRANT: [REDACTED]

5 Q. Okay. So I cannot locate, but I  
6 believe there's an allegation here concerning  
7 [REDACTED] [REDACTED]. Taking my word for  
8 it that there is an allegation in here  
9 concerning [REDACTED] [REDACTED], would  
10 that have been something that, based on your  
11 prior discussion concerning the allegations  
12 related to Ms. Commisso and touching, that  
13 should have been referred to law enforcement?

14 A. I don't know if it was or it wasn't.  
15 It would have to be -- the person reviewing it  
16 would have to consider it sexual to make the  
17 referral, and I don't know if that was or was  
18 not concluded.

19 Q. What would the importance of it being  
20 sexual relate to whether or not it would  
21 constitute a crime?

22 A. Well, the -- when going back to the  
23 other allegations, there are specific criminal  
24 statutes that would apply in those situations  
25 when it's sexual. I think I saw, [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

Q. Gotcha. Thank you very much for finding it.

5

6

A. That's the -- about seven lines up, eight lines up from the end of the second page.

7

8

Q. Okay.

9

A. I think.

10

So I mean, one, was it sexual; and, two, was it potentially criminal conduct based on what was known on what was written at that time or on what was described. I'm not certain that [REDACTED] would be described as criminal conduct.

11

12

13

14

15

16

Q. Okay. But in any event, there was still an investigation into this complaint which included discussion about [REDACTED]?

17

18

19

A. Correct.

20

Q. Okay. If you can turn to Tab 33.

21

(Exhibit 33, Part of the disclosure made to the attorney general regarding this complaint, marked for identification.)

22

23

24

A. You said 33?

25

Q. 33.

1 A. Okay.

2 Q. Take a moment to review it and let me  
3 know when you're ready.

4 A. Okay.

5 Q. Okay. Have you seen this document  
6 before?

7 A. Yes, I believe this was part of the  
8 disclosure we made to the attorney general  
9 regarding this complaint.

10 Q. Gotcha. What is this document?

11 A. This looks like the notes of the  
12 investigator [REDACTED] regarding her  
13 interview of [REDACTED]

14 Q. [REDACTED] being the person who made  
15 allegations concerning [REDACTED] correct?

16 A. Correct.

17 Q. Okay. And it says, among other  
18 things, [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] That's on page four.

1 A. Yes.

2 Q. Okay. So that reflects the policy we  
3 discussed earlier that even if the complainant  
4 says she does not want a formal complaint  
5 drafted, a complaint should still be filed,  
6 correct?

7 A. Correct.

8 Q. And it reflects the policy that an  
9 investigation should still be conducted correct?

10 A. Correct.

11 Q. And [REDACTED] is a senior  
12 official in the executive chamber, correct?

13 A. Yes.

14 Q. So conceivably she understood these  
15 obligations?

16 A. Correct.

17 Q. Okay. Going back to something you  
18 said earlier. In relation to the attorney  
19 general's investigation into the allegations  
20 against Governor Cuomo, do you know whether or  
21 not the attorney general can take interim  
22 actions against the Governor while it's doing  
23 its investigation?

24 A. I don't know.

25 Q. GOER can take interim actions, though,

1 right?

2 A. Against the Governor?

3 Q. Meaning, GOER is empowered to  
4 recommend interim actions, including those that  
5 would relate to the Governor, correct?

6 A. The -- the policy says interim action  
7 can be taken, yes.

8 Q. So because GOER is choosing not to  
9 investigate or take any action on these  
10 complaints during the pendency of the AG's  
11 investigation, if the AG can't take interim  
12 action than no interim action is going to be  
13 taken, correct?

14 A. All I can say is no interim action has  
15 been taken.

16 Q. Okay. Notwithstanding the fact that  
17 Ms. Commisso and Ms. McGrath still work for the  
18 executive chamber, correct?

19 A. GOER has taken no interim action.

20 Q. Okay. All righty. If you can turn to  
21 Tab 32.

22 (Exhibit 32, Draft Investigation Report,  
23 marked for identification.)

24 Q. Take a moment to review it and let me  
25 know when you're ready.

1 A. Okay.

2 Q. Okay. Have you seen this document  
3 before?

4 A. As -- I believe as part of our  
5 disclosure to the attorney general, yes.

6 Q. Great. And what is it?

7 A. This is a draft Investigation Report  
8 prepared by [REDACTED] (phonetic) to [REDACTED]

9 [REDACTED]  
10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. Gotcha. And this is the sort -- GOER  
14 has implemented new policies since 2018 but the  
15 current investigative report mirrors what this  
16 report outlines, correct?

17 Sorry. I shouldn't say the current.  
18 Meaning, based on documents we've reviewed  
19 earlier in connection with GOER investigations  
20 they prepare a report, a draft investigatory  
21 report, correct?

22 A. Correct.

23 Q. Okay. And it would mirror what you  
24 see here even though this was an earlier --

25 A. Yeah, I -- I -- I think a lot of the

1 template from 2018 is reflected in draft  
2 investigative reports from prior to 2018.

3 Q. Gotcha. Now if you go to the bottom  
4 of page eight.

5 A. Page eight.

6 Q. Yep.

7 A. Okay.

8 Q. It says, [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Do you have any understanding as to  
12 why the investigator would not be able to have  
13 contact with the Governor's human resources  
14 director?

15 A. No.

16 Q. Gotcha. Even though at this time DAAO  
17 assigned to investigate this would have been  
18 somebody who worked or -- you know what,  
19 withdrawn.

20 All right. If you can turn to Tab 34.

21 (Exhibit 34, Closing letter to [REDACTED]  
22 regarding the investigation that was undertaken  
23 regarding her complaint about [REDACTED] marked for  
24 identification.)

25 A. Okay.

1 Q. Take a moment to review it and let me  
2 know when you're ready.

3 A. Okay.

4 Q. Great. Have you seen this document  
5 before?

6 A. Yes, I believe this is part of the  
7 disclosure we made.

8 Q. Okay. And what is it?

9 A. This is a -- looks like a closing  
10 letter to [REDACTED] regarding the  
11 investigation that was undertaken regarding her  
12 complaint about [REDACTED]

13 Q. And the allegations were substantiated  
14 in this instance, correct?

15 A. Correct.

16 Q. Okay. And do you know whether or not  
17 the conclusion that the allegations were  
18 substantiated were ever transmitted to

19 [REDACTED]

20 A. Do I have personal knowledge that this  
21 letter was sent?

22 Q. Yeah.

23 A. No, I don't.

24 Q. And do you know whether or not any  
25 actions were taken against [REDACTED] in light of

1 the findings that were made?

2 A. I believe some action was taken but I  
3 don't recall what it was.

4 Q. Okay. And related back to the --  
5 withdraw.

6 All right. Besides the complaints  
7 we've talked about today, has the executive  
8 chamber ever referred any other report or  
9 complaint of discrimination to GOER?

10 A. Yes.

11 Q. How many?

12 A. I'm not certain I can give you a  
13 number.

14 Q. Okay. Can you ballpark?

15 A. No.

16 Q. Okay. And those complaints of  
17 discrimination, do those include complaints  
18 concerning sexual harassment?

19 A. They could if they involved sexual  
20 harassment, yes.

21 Q. Okay and how many?

22 A. That -- that I don't know.

23 Q. And when I say referred, meaning both  
24 employees and the executive chamber referred it  
25 or another employee referred it but it relates

1 to the executive chamber, you're aware of other  
2 complaints?

3 A. So you're talking about complaints  
4 only involving the executive chamber like as --  
5 because I know -- I just want to make sure I'm  
6 getting the right terminology? So it's -- it  
7 would be a complaint referred by somebody about  
8 the executive chamber?

9 Q. I'll make it easier. Are you aware of  
10 other complaints concerning employees in the  
11 executive chamber.

12 A. Any complaint?

13 Q. Any sexual harassment complaint?

14 A. No.

15 Q. Okay. And any other complaints of  
16 discrimination concerning employees in the  
17 executive chamber?

18 A. Beyond --

19 Q. Sexual harassment.

20 A. I -- I don't -- I don't recall any as  
21 I sit here.

22 Q. Okay. Are you aware of a complaint  
23 that was made to GOER by someone named [REDACTED]  
24 [REDACTED] on behalf of [REDACTED]

25 A. Yes. I believe we're working on what

1 should be disclosed in terms of that, yes.

2 Q. Okay. And do you recall when you  
3 received a complaint?

4 A. Late June, early July 2020.

5 Q. And have you started investigating?

6 A. I believe the matter's been accepted,  
7 yes.

8 Q. Okay. And do you know whether or not  
9 there's been a determination?

10 A. I believe it's been found -- it's been  
11 concluded and it's been determined to be  
12 unsubstantiated.

13 Q. Do you have any knowledge as to why  
14 the complaint has been deemed unsubstantiated?

15 A. Specifically, no. I'm -- my belief  
16 would be because the investigator and other --  
17 everyone else involved didn't determine it to  
18 violate the policy.

19 Q. Okay. And am I correct that you will  
20 be producing documents concerning this  
21 investigation to us?

22 A. There will be at least a disclosure of  
23 the referral and other documents. I think, you  
24 know, we'll -- I don't know -- at this point I  
25 don't want to comment on the full scope of the

1 disclosure.

2 Q. Okay. Are you aware of any complaints  
3 that pertain to Empire State Development in  
4 which [REDACTED] and [REDACTED] were involved as  
5 complainants or referrers?

6 A. No. I think that that is -- I'm aware  
7 of an issue that came up, but it's not a  
8 discrimination referral in my opinion.

9 Q. Okay. And what is the basis for your  
10 understanding that it's not a discrimination  
11 referral?

12 A. Because my understanding is, is that  
13 the issue [REDACTED] and [REDACTED] referred was  
14 concerns by an individual complainant about the  
15 manner in which our investigator spoke to her in  
16 the context of that conversation, but the  
17 underlying issue was already at GOER.

18 Q. Okay. This presents an interesting  
19 question: What if a complaint to GOER relates  
20 to GOER? Meaning, if a hypothetical complainant  
21 believes that the way an investigator has  
22 treated her was sexually harassing or  
23 discriminatory, how does GOER conduct that  
24 investigation?

25 A. If it was -- if it rose to the level

1 of employment -- an allegation of employment  
2 discrimination --

3 Q. Uh-huh.

4 A. -- we maintain a outside counsel who  
5 would investigate those complaints. That  
6 outside counsel has recently changed because we  
7 had a change in vendor. And that entity would  
8 do the factual investigation and refer back to  
9 us what -- you know, that factual investigation,  
10 then we would take action based on that  
11 complaint.

12 Q. Okay. And is it your understanding  
13 that the underlying complaint I referenced  
14 earlier is still in front of GOER?

15 A. I believe it's been concluded.

16 Q. Okay. And do you know what the  
17 determination was in that matter?

18 A. No. I don't recall how they closed  
19 the matter.

20 Q. Okay. And based on what you testified  
21 to earlier concerning what your understanding  
22 about that complaint is, would this be among the  
23 documents you would be producing to us shortly?

24 A. I don't know that we have determined  
25 or not determined that those are responsive or

1 unresponsive.

2 Q. Gotcha.

3 A. And I realize you're operating under  
4 something from [REDACTED] or about  
5 [REDACTED], but I'm -- you know, from a  
6 document referral perspective and whether it's  
7 within the scope of the subpoena or not I don't  
8 think we've finalized a determination.

9 Q. Okay. By the way, how --  
10 approximately what percentage of complaints that  
11 are referred to GOER are substantiated?

12 A. I don't have any statistics on that  
13 but -- so I can't speculate in terms of what  
14 that -- that statistical finding would be.

15 Q. And if I asked or I should just ask:  
16 Approximately what percentage of sexual  
17 harassment allegations that GOER received are  
18 substantiated?

19 A. That I don't know either.

20 Q. Okay. Did there come a time that you  
21 spoke with Judy Mogul about an executive chamber  
22 employee named [REDACTED]

23 A. [REDACTED]  
24 Yes, I believe so, yes.

25 Q. Do you recall how many conversations

1 you had with Ms. Mogul?

2 A. No.

3 Q. Was any one else on the call?

4 A. Not that I recall.

5 Q. What did you discuss about [REDACTED]

6 A. Ms. Mogul called me regarding a  
7 situation involving a meeting that I believe  
8 might have been a remote meeting attended by  
9 [REDACTED] and others or -- what we now call  
10 remote meeting, may have just been a conference  
11 call at the time. And there was a discussion at  
12 that and something occurred regarding that that  
13 an individual took issue with. And then I  
14 believe Ms. Mogul spoke to -- I think it was  
15 [REDACTED] about what -- what had occurred.

16 Q. Okay. Am I correct that [REDACTED]  
17 complained, among other things, that a senior  
18 member of the executive chamber had made a  
19 racist verbal attack on him?

20 A. I don't know that Ms. Mogul used those  
21 exact words describing it but, you know, I think  
22 that that might have -- there might have been  
23 something about somebody being -- about racism.

24 Q. Okay. And that would be something  
25 that GOER would investigate, right?

1           A.     If we had a complaint, yes.  If there  
2 was a complaint, yes.

3           Q.     Okay.  Is it your understanding that  
4 if Ms. Mogul tells you about conduct that could  
5 be potentially racist, but neither Ms. Mogul nor  
6 the person who complained actually files a  
7 complaint, GOER doesn't need to investigate,  
8 even if it's aware?

9           A.     GOER -- well, I can -- I think it's  
10 probably not generalizable in those terms but in  
11 terms of [REDACTED] it's true that GOER did not  
12 investigate anything regarding [REDACTED]

13          Q.     Okay.  And making it generalizable, if  
14 someone complains about conduct, meaning let's  
15 assume it's just an E-mail and not an official  
16 complaint form, just an E-mail, and GOER gets  
17 this E-mail, is it your position that GOER does  
18 not need to conduct an investigation unless a  
19 supervisor or the actual complainant also  
20 submits a complaint form?

21          A.     No, we wouldn't take that narrow a  
22 position.  It would depend on what -- what we  
23 were informed of.

24          Q.     Okay.  And I'm assuming Ms. Mogul  
25 never submitted a complaint form in this matter,

1 the matter concerning [REDACTED]

2 A. No.

3 Q. Okay. If you can turn to Tab 35.

4 (Exhibit 35, Complaint by Ms. Mogul,  
5 marked for identification.)

6 Q. Take a moment to review it and let me  
7 know when you're ready.

8 A. Yes, I'm -- I'm ready.

9 Q. Okay. And do you recognize this  
10 document?

11 A. Yes, this was a document that we  
12 turned over as part of our discovery to the  
13 attorney general earlier this year.

14 Q. Okay. And what is it?

15 A. It's a complaint directly filed with  
16 GOER by Ms. Mogul based on a complaint with an  
17 employee of the chamber.

18 Q. Gotcha. So this is an instance when  
19 Ms. Mogul actually did go through and submit a  
20 complaint?

21 A. Correct.

22 Q. Okay. Have you discussed this  
23 complaint with anyone in the executive chamber?

24 A. I believe Ms. Mogul called me on this  
25 and I referred her to [REDACTED].

1 Q. Okay.

2 A. But she may have disclosed -- I recall  
3 that she may have disclosed the subject matter  
4 to me but I wanted her to talk to [REDACTED]

5 Q. And do you know whether or not GOER  
6 has investigated this complaint or is in the  
7 process of investigating this complaint?

8 A. I believe this complaint was  
9 investigated and concluded.

10 Q. And do you know what the determination  
11 was?

12 A. No, I don't recall.

13 Q. Okay. Do you recall if any workplace  
14 violence or harassment report related to [REDACTED]  
15 [REDACTED] and the [REDACTED]  
16 [REDACTED] ?

17 A. Do I recall an issue regarding it --

18 Q. Yeah.

19 A. -- or was it referred to GOER.

20 Q. Was it referred to GOER.

21 A. I'm not aware that it was referred to  
22 GOER because that would be not what's --  
23 normally workplace violence is within the  
24 purview of individual agencies, it's not covered  
25 under EO 187 so it -- it would be odd for

1 workplace violence complaint to be referred to  
2 GOER.

3 Q. Okay. One second.

4 Actually, if you can turn to Tab 37.

5 (Exhibit 37, A document, marked for  
6 identification.)

7 A. 37?

8 Q. Yup. Please review it and let me know  
9 when you're ready.

10 A. Okay.

11 Q. And does that refresh your  
12 recollection about the incident we were just  
13 discussing earlier involving [REDACTED] ?

14 A. No, it doesn't because there's -- I  
15 don't see any reference that a workplace  
16 violence incident was referred to GOER.

17 Q. Gotcha. Okay. And it's your  
18 understanding generally that workplace violent  
19 incidents aren't investigated by GOER?

20 A. They are not.

21 Q. Okay.

22 A. Unless they are -- unless they involve  
23 our own employees. Every agency has their own  
24 policy. Every agency must follow their own  
25 policy, and they're empowered and authorized and

1 required to handle those complaints in  
2 accordance with their policy.

3 Q. Okay. Does -- do you know whether or  
4 not -- in the same way that there's policies  
5 promulgated for sexual harassment and the EEO  
6 policies, other policies related to workplace  
7 violence that are promulgated by the state,  
8 meaning the executive?

9 A. I'm trying to -- from -- by the  
10 executive you mean by like one agency on behalf  
11 of all others?

12 Q. I'll narrow the question. You  
13 discussed earlier you being involved in the  
14 process of promulgating or formulating policies  
15 for state employees who work in executive  
16 agencies under direct executive control,  
17 correct?

18 A. Correct.

19 Q. Are there similar policies promulgated  
20 through that sort of procedure concerning  
21 workplace violence?

22 A. No. There's a state law in the labor  
23 law that agencies are required to follow, and  
24 they all went through a development process with  
25 local union involvement to have a policy and a

1 procedure. And so that's individual to each  
2 agency which reflects the -- what's in law.

3 Q. Okay. Mr. Volforte -- sorry, go  
4 ahead.

5 A. Could we go back to Tab 37?

6 Q. Sure.

7 A. Noting that my name is referenced  
8 there.

9 Q. Uh-huh.

10 A. What came to me was [REDACTED]  
11 concern about the conversation she was to have  
12 with [REDACTED] about [REDACTED]  
13 [REDACTED].

14 Q. Uh-huh.

15 A. It wasn't about the workplace violence  
16 complaint or her prior sexual harassment  
17 complaint.

18 Q. Gotcha. Is it typical for people to  
19 relay this or seek your advice in this sort of  
20 situation?

21 A. Yes.

22 Q. How often would you say employees do  
23 this, meaning seek your advice concerning  
24 instances that don't necessarily involve, you  
25 know, violations of the harassment policy,

1 discrimination policies or the workplace  
2 violence policy?

3 A. Multiple times a month.

4 Q. Okay. And is there a reason why they  
5 reach out to you for this advice, that you  
6 understand?

7 A. I -- you know, generally speaking we  
8 are -- my words, the keeper of the Governor's  
9 relationship with the unions and his employees,  
10 and we have certain expertise in terms of, you  
11 know, handling employment matters generally, so  
12 we're consulted a lot on general employment  
13 issues.

14 MR. GRANT: Gotcha. So I may be done  
15 but I need to confer with my colleagues  
16 just to make sure. Do you mind if we take  
17 a ten-minute?

18 THE WITNESS: Not at all.

19 MR. GRANT: Thank you.

20 THE VIDEOGRAPHER: Time now -- time  
21 now is 4:02 p.m. We're going off record.

22 (Short recess taken)

23 THE VIDEOGRAPHER: Time now is  
24 4:11 p.m. We are back on record.

25 Q. Great. Just a couple quick follow-up

1 questions. Earlier you testified that in  
2 practice GOER would defer from or investigating  
3 a complaint during the pendency of any parallel  
4 criminal investigation, correct?

5 A. Yes.

6 Q. Okay. And at the conclusion of such  
7 investigation GOER may then perform an  
8 investigation or would then conduct an  
9 investigation, correct?

10 A. Correct.

11 Q. Okay. My question: Is there ever a  
12 time that the process is so long that GOER would  
13 go ahead and investigate the complaint? So, for  
14 instance, if a criminal prosecution is lasting  
15 three years, would you defer performing an  
16 investigation for three years?

17 A. I think that would depend on the  
18 specific case, and we'd have to consult with law  
19 enforcement, because if a case was going on that  
20 long, again, as I referenced earlier, law  
21 enforcement often doesn't like administrative  
22 investigations in the middle of criminal  
23 investigations. And that's not born necessarily  
24 of discrimination complaint referrals we've made  
25 but just other conduct by -- that employees

1 might have committed on the job that generally  
2 they're -- they're asked to.

3 But if it went on that long, it --  
4 that would clearly impact an ability with our  
5 unionized work force, in many cases, to bring  
6 discipline, should that be the end result of a  
7 case, because there are certain time periods in  
8 which we must bring discipline against unionized  
9 employees, depending on the union.

10 So we would definitely monitor a  
11 situation like that to make sure that we were  
12 taking action that we needed to take if it would  
13 look like something was going to go that way.

14 Q. Gotcha. And also during the pendency  
15 of a criminal investigation would that -- in  
16 practice would you not impose interim actions  
17 even during that time?

18 A. Yeah, often, yes, we -- we would.

19 Q. You would? Sorry.

20 A. We -- we would because -- because  
21 generally when you're talking about something  
22 that is of a potentially criminal nature you're  
23 talking about serious conduct. I just mean that  
24 generally in terms of employee misconduct not  
25 necessarily with respect to harassment and

1 discrimination.

2 Q. Okay. And am I correct that no  
3 interim actions have been taken on Ms. -- the  
4 complaint involving Ms. Commisso and the  
5 complaint involving Ms. McGrath?

6 A. Not by GOER.

7 Q. Okay. And did GOER even make a  
8 determination as to whether any sort of interim  
9 action should be imposed?

10 A. Not that I am aware of, no.

11 Q. Okay. So that's it. Is there  
12 anything else you'd like to add or any answers  
13 you want to clarify before we conclude today?

14 A. Yeah. I'm looking at -- you asked me  
15 a series of questions earlier about Exhibit 27  
16 and Exhibit 28.

17 Q. Yup.

18 A. And I -- I noticed in Exhibit 28 on  
19 what is the third page of the exhibit, which is  
20 listed at page two, at the top some of the text  
21 is cut off there.

22 Q. Yeah.

23 A. I have what was supplied but I'm  
24 wondering if you could inform me if there is a  
25 reference in the cutoff language as to me. I

1 can certainly pull it up with a couple minutes  
2 notice on my screen just to see, but I just --

3 Q. I'm not sure to be perfectly honest.

4 A. I believe earlier in testifying with  
5 respect to state -- state. Excuse me,  
6 Exhibit 27.

7 Q. Uh-huh.

8 A. I believe I may have testified that my  
9 recollection was is that we spoke in the morning  
10 and this -- to Ms. Garvey and Ms. Mogul and the  
11 complaint may have been filed later that day.  
12 I -- I -- I seem to recall that was my  
13 testimony. And as during the break I kept  
14 flipping back between state -- Exhibit 27 and  
15 Exhibit 28, pardon me, and the statement you  
16 directed me to at the bottom which predates the  
17 filing of the complaint.

18 I believe that there may have been a  
19 conversation about this complaint prior to  
20 March 15th and March 10th, which would put that  
21 note in context, because I'm not certain that  
22 Ms. Garvey would have been aware that that's how  
23 we handled such complaints. And then the  
24 complaint filed subsequent to that conversation.  
25 I don't have a document that supports that but

1 in terms of being sequential, in my mind that  
2 sequence makes the most sense in terms of  
3 explaining why there would be a reference about  
4 GOER on Exhibit 28 which involves details of a  
5 conversation which I thought happened on  
6 March 15 but I think happened before March 15.

7 Q. Okay. Am I correct, are you saying  
8 that there was more than one conversation now or  
9 that the conversation you testified to earlier  
10 took place earlier than the morning before the  
11 complaint was filed?

12 A. I think the conversation I testified  
13 to took place on or about March 8 and the  
14 written document was filed on March 15.

15 Q. Okay. And if you turn to Tab 29.

16 A. Yes.

17 Q. Which is Ms. Grasso -- from you to  
18 Ms. Grasso attaching Ms. Commisso's learning  
19 transcript, right?

20 Do you recall -- so it would be around  
21 the time that there was discussion with  
22 Ms. Grasso about conveying Ms. Commisso's  
23 learning transcript?

24 A. I don't know whether it was a  
25 discussion or a written request, and I'm going

1 to look and review my records to see if I have  
2 an E-mail transmittal asking for this. But it  
3 would -- you know, if as I now believe that that  
4 conversation would have happened on -- on or  
5 about March 8th, that would put me communicating  
6 the learning transcript after receipt of  
7 information about Ms. Commisso having a  
8 complaint.

9 Q. Okay. All right. Anything else you'd  
10 like to clarify?

11 A. Not at this time.

12 Q. Okay. And you're free to reach out to  
13 us later if there's anything you would like to  
14 clarify.

15 A. Okay.

16 Q. And having heard the questions we  
17 asked today, is there anything else you'd like  
18 to convey to us concerning the subject matter of  
19 our investigation?

20 A. I'm going to take a moment.

21 Q. Sure.

22 A. I was -- wasn't -- wasn't expecting  
23 that.

24 Q. How long do you need?

25 A. No, I just need a couple of seconds

1 to --

2 Q. Sure.

3 A. -- process my thoughts.

4 No, I -- I -- I think the only comment  
5 I would have, I think, reflects a comment that  
6 [REDACTED] communicated to Ms. -- I know I'm  
7 butchering her name Ms. Mainoo or Mainoo. I  
8 apologize. That, you know, we -- we are  
9 officers of the court and if there is  
10 information or documents that you think we have,  
11 we'd ask that you, you know, separately reach  
12 out.

13 You know, again, we're operating under  
14 what the subpoenas are, but if there is other  
15 information, you know, we will do what we need  
16 to do in terms of compliance with subpoenas.  
17 And we are trying to be as diligent as we can in  
18 terms of finding you all information. So I  
19 would just say that as a concluding comment for  
20 myself.

21 Q. Okay. And again, if -- as I said at  
22 the beginning, if you'd like to provide a brief  
23 sworn statement, you may do so. Would you like  
24 to provide a brief sworn statement?

25 A. No.

1           MR. GRANT: Okay. We are now going to  
2 conclude this examination. Thank you for  
3 speaking with us today. I'll remind you of  
4 your continuing obligations under our  
5 subpoena. If we need you to come back to  
6 answer additional questions we will contact  
7 you through -- or we will contact you.

8           Also, if you have any additional  
9 documents that are responsive to our  
10 subpoena, we have a -- you have a  
11 continuing obligation to produce them to  
12 us, with the caveat that I heard your  
13 statement that, we are officers of the  
14 court and you would ask that if there are  
15 particular things we would like we would  
16 reach out to you.

17           But again, also under the subpoena you  
18 have an independent obligation to conduct a  
19 diligent search, and I would remind you to  
20 do so.

21           Remember under Executive Law 63(8),  
22 the provision under which this  
23 investigation is being conducted, that  
24 provision prohibits you and your counsel,  
25 if you later choose to have counsel, from

1 revealing anything about what we asked you  
2 today and what your testimony was to anyone  
3 else. If anyone asks to you disclose such  
4 information, please let us know, including  
5 any reasons they provide for seeking such  
6 information. And we will discuss with you  
7 whether any disclosure should be permitted.  
8 Okay?

9 THE WITNESS: Yes.

10 MR. GRANT: And that concludes the  
11 examination. Thank you very much,  
12 Mr. Volforte.

13 THE WITNESS: Thank you all. Have a  
14 good rest of the day.

15 MR. GRANT: You too. Have a good  
16 afternoon.

17 THE WITNESS: Thank you.

18 MR. GRANT: Bye everyone. Thank you.

19 THE VIDEOGRAPHER: Time now is  
20 4:23 p.m. We're going off record. This  
21 includes media unit four and today's  
22 portion of testimony.

23 (Time noted: 4:23 p.m.)

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C E R T I F I C A T E

STATE OF New York)

: ss

COUNTY OF RICHMOND)

I, RITA M. PERSICHETTY, a Notary Public within  
and for the State of New York, do hereby certify:

That MICHAEL VOLFORTE, the witness whose  
deposition is hereinbefore set forth, was duly sworn  
by me and that such deposition is a true record of  
the testimony given by such witness to the best of  
my ability.

I further certify that I am not related to any  
of the parties to this action by blood or marriage;  
and that I am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 13th day of July, 2021.



\_\_\_\_\_  
RITA M. PERSICHETTY