

IN THE MATTER OF AN INVESTIGATION INTO
THE ALLEGED MISUSE OF RESOURCES OF THE
DIVISION OF STATE POLICE

DARREN DOPP,
COMMUNICATIONS DIRECTOR TO
GOVERNOR ELIOT SPITZER,

DECISION and
NOTICE OF
CIVIL ASSESSMENT

Respondent

The New York State Commission on Public Integrity (“Commission”), at its August 6, 2009 meeting, considered the Hearing Officer’s Findings of Fact and Recommendation (“Decision”) in the Matter of an Investigation into the Alleged Misuse of Resources of the Division of State Police, Darren Dopp, Communications Director to Governor Eliot Spitzer, Respondent (“Dopp”). The Decision is incorporated herein by reference and made a part of this Decision and Notice of Civil Assessment. For the reasons set forth in the Decision and those set forth below, the Commission adopts the Hearing Officer’s findings of fact and legal conclusions, but modifies the Decision with respect to the penalty to be assessed.

I. Introduction

In its current procedural posture, this matter presents a narrow question: whether, based on the hearing record evidence, Dopp “used [his position as the Governor’s Communications Director] to secure unwarranted privileges or exemptions for himself . . .” or others. (Decision at 11, *quoting* Public Officers Law §74(3)(d)) The Commission answers this question in the affirmative. Thus, we conclude that Dopp violated Public Officers Law §74(3)(d) and (h).

Based on the hearing record evidence, we find, as the Hearing Officer also found, that Dopp knowingly and intentionally violated Public Officers Law §74(3)(d) by misusing the resources of the State Police, a critically and especially sensitive State resource, for a non-governmental purpose, *i.e.*, to damage Senate Majority Leader Joseph Bruno, then a political opponent of the Governor. Through his misuse of State Police resources, Dopp obtained detailed information about Senator Bruno’s travel within New York City that the State Police did not maintain in the ordinary course of its operations. Dopp directed the State Police to create official-looking documents to his specifications that would not have existed otherwise and provided those documents to a newspaper reporter for publication. The documents contained information that the State Police did not and generally would not make publicly available if it were requested, for example, pursuant to the Freedom of Information Law (“FOIL”). Dopp’s public disclosure of the information at issue, even after Senator Bruno’s trips were completed, raised security concerns.

Misuse of a State resource to obtain a personal or political benefit clearly violates Public Officers Law §74(3)(d), a part of the State Code of Ethics that, by its terms and as construed in our precedents and published judicial decisions, prohibits the use of one's State position to obtain either a financial or a non-financial benefit for oneself or others. *See, e.g., New York State Asphalt Association v. White*, 138 Misc.2d 836 (Sup. Ct. Albany Co. 1988) (use of official position to compel payment to not-for-profit corporation that supports minority business program).

The New York State Ethics Commission ("Ethics Commission")¹ authoritatively construed Public Officers Law §74(3)(d) and (h), the very same provisions that we find Dopp knowingly and intentionally violated, in Advisory Opinion No. 07-03,² which is commonly referred to as "the aircraft opinion." In that opinion, the Ethics Commission unequivocally stated one of the basic principles underlying our State's Code of Ethics: "State supplies, equipment, personnel and other resources must be used only for government purposes and not for private gain or partisan politics."

The Ethics Commission also summarized the salient advisory opinions and enforcement actions that embody this bedrock principle:

In Advisory Opinion No. 93-9, in which the Commission considered the application of §74 to a State employee seeking elective office, the Commission recognized that such a campaign might require the substantial expenditure of time and resources. The Commission held that "[n]o State resources of any type, including telephones, office supplies, postage, photocopying machines or support staff assistance," could be used in the furtherance of a State employee's campaign. In Advisory Opinion No. 98-12, addressing whether State employees could work on political campaigns, including fund-raising, the Commission reaffirmed this basic principle and barred the use of State resources for political purposes, stressing that, "[a]t all times the State employee shall avoid conduct which promotes the perception that his actions as a State employee may be influenced by his political activities."

The Commission has taken action to enforce Public Officers Law §74(3)(d) and (h) when State officials have misused State resources (see, In the Matter of Alan G. Hevesi, Comptroller of the State of New York, finding that *Mr. Hevesi improperly used State resources, a State employee, to provide transportation to his wife*; In the Matter of James Bailey, an employee of the New York State Housing Finance Agency, finding *Mr. Bailey improperly used State resources in engaging in his outside law practice.*)

¹ The Commission was created by the Public Employee Ethics Reform Act (L. 2007, ch. 14) ("PEERA") and, in accordance with that statute, has consistently followed the precedents of the Ethics Commission, one of the Commission's predecessor agencies.

² Dated August 16, 2007, just a couple of weeks after the Attorney General's Office published its report on the so-called Troopergate matter, Advisory Opinion No. 07-03 was issued in response to a request for an advisory opinion that Governor Eliot Spitzer made while Dopp was serving in his administration.

Advisory Opinion No. 07-03 (emphasis supplied; footnote omitted).

On his first day in office, January 1, 2007, Governor Spitzer issued Executive Order No. 1, which explicitly prohibited Executive Branch State officers and employees, including members of the Governor's staff, from using *any* State resources, *including personnel*, for any non-governmental purposes: "State supplies, equipment, computers, *personnel and other resources* may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind." (Emphasis supplied). Governor Paterson's Executive Order No. 7 is virtually identical in this regard.

In Advisory Opinion No. 98-12, cited in the above-quoted portion of the aircraft opinion, the Ethics Commission applied Public Officers Law §74(3)(d), (f) and (h) to bar State officers and employees from using "State resources for political purposes, engage[ing] in political activities in a State office, or engage[ing] in such activities during business hours unless leave is taken."

In addition to the Code of Ethics, other statutes erect a firewall between political activities and State officers and employees acting in their official capacities. For example, fairly read, Civil Service Law §107 (the so-called "Little Hatch Act") stands for the proposition that political affiliation or allegiance has no legitimate role in the hiring, evaluation, promotion or compensation of State employees. *See also People v. Haff*, 53 N.Y.2d 997 (1981) (upholding conviction under Civil Service Law §107(3) for giving notice to subordinates within building occupied for governmental purposes that they were to collect and receive political contributions); Public Officers Law §73(16) and (17); Election Law §17-158 (prohibiting State office holders, candidates and nominees from corruptly using or promising to use, directly or indirectly, any official authority or influence to secure or help secure any office or public employment).³

The discussion below is primarily directed at putting Dopp's Reply to the Hearing Officer's Decision ("Reply") in perspective. Overall, Dopp's Reply widely misses the mark. It attempts to interject evidence and information that is outside the hearing record. Under our regulations (*see* 19 NYCRR Part 941.15(b)), we are bound by that stricture and make all of the findings and conclusions herein based solely on the hearing record. In addition, as we demonstrate below, Dopp's effort in his Reply seems to be calculated to deflect from the fundamental point that his scheme trampled inviolate interests critical to the effective and trustworthy operations of State government.

³ More broadly, the Commission has repeatedly construed the so-called "Revolving Door Provisions" set forth in Public Officers Law §73(8) to stand for the principle that a State employee is prohibited from exploiting his or her State employment for personal gain. Indeed, to make sure State employees do not use their State positions for personal gain, the Commission has construed the Public Officers Law to contain a "reverse two-year bar" that requires State officers and employees to recuse themselves from matters involving their former private employers for two years after entering State service. Advisory Opinions No. 98-09.

II. Background

A. Notice of Reasonable Cause

On July 24, 2008, the participating members of the Commission⁴ unanimously agreed to issue a Notice of Reasonable Cause (“NORC”) alleging, among other things, that Dopp violated Public Officers Law §74(3)(d) and (h).⁵

With respect to Dopp’s alleged violation of subdivision (d), the NORC stated:

The Commission has determined, based on the record evidence, that there is reasonable cause to believe that Dopp knowingly and intentionally violated Public Officers Law §74(3)(d) when he used or attempted to use his official position as Communications Director for the Executive Chamber to secure unwarranted privileges or exemptions for Governor Spitzer and himself when he *engaged the State Police* to assist him in preparing a negative news story concerning Bruno’s use of State aircraft. There is reasonable cause to believe that *Dopp initiated and directed a course of conduct* that (i) *caused the improper creation of documents by the State Police* that were made to appear as if they were official documents and, thereafter, Dopp provided those documents to the Times Union for reproduction in a news article – that he assisted in preparing – published on July 1, 2007; and (ii) *caused the improper collection of information from the State Police*, sometimes on a real time basis, concerning the times and locations of Bruno’s activities while in New York City during May and June, 2007. In the process, Dopp bypassed Executive Chamber procedures concerning the release of documents under FOIL.

NORC at 64 (emphasis supplied).

With respect to Dopp’s alleged violation of subsection (h), the NORC stated:

The Commission has determined, based on the record evidence, that there is reasonable cause to believe that Dopp engaged the State Police to assist him in preparing a negative news story concerning Senator Bruno’s use of State aircraft, and that in doing so, *Dopp initiated and directed a course of conduct* that (i) *caused the improper creation of documents by the State Police* that were made to appear as if they were official

⁴ Commissioner Andrew G. Celli, Jr., recused himself from this matter.

⁵ The NORC also alleged that three other Spitzer Administration officials violated the Public Officers Law: Richard Baum, Secretary to Governor Eliot Spitzer (“Baum”); William Howard, Assistant Secretary for Homeland Security (“Howard”); and Preston Felton, Acting State Police Superintendent (“Felton”). Baum and Howard entered into Disposition Agreements and admitted they violated Public Officers Law §74(3)(h). The Commission has not yet adjudicated the allegations set forth in the NORC that Felton violated Public Officers Law §74(3)(c), (d) and (h).

documents and, thereafter, Dopp provided those documents to the Albany Times Union for reproduction in a news article – that he assisted in preparing – published on July 1, 2007; and (ii) *caused the improper collection of information from the State Police*, sometimes on a real time basis, concerning the times and locations of Bruno’s activities while in New York City during May and June, 2007. In the process, Dopp bypassed Executive Chamber procedures concerning the release of documents under FOIL. Consequently, the Commission finds reasonable cause to believe Dopp violated Public Officers Law §74(3)(h).

NORC at 66 (emphasis supplied).

B. Adjudicatory Proceedings

On January 26, 2009, the Commission issued and duly served on Dopp a Notice of Hearing. (March 11, 2009 Transcript at 44-45, Exhibit 185)⁶ On March 10, 2009, the day before the hearing’s scheduled commencement, Dopp informed the Hearing Officer and the Commission of his intention not to participate in the hearing. (March 11, 2009 Transcript at 2-4; Court Exhibit 1; Decision at 1)⁷ On March 11 and 12, 2009, the Hearing Officer conducted the civil penalty hearing. (Decision at 1) The Commission introduced and the Hearing Officer accepted into the record the testimony of eight witnesses and a total of forty-seven exhibits. Although the Hearing Officer informed Dopp’s counsel in a telephone conference conducted on March 10, 2009 that Dopp was welcome to participate in the proceeding at any time, neither Dopp nor his counsel appeared at any time during the hearing. (Decision at 1)

⁶ During the course of interviews conducted as part of the investigation that resulted in the NORC, Commission staff identified and marked approximately 180 exhibits. When any of these exhibits was introduced into evidence at the hearing, it was identified by the same number they previously had been given during the course of the investigation. Documents introduced as hearing exhibits that had not been previously numbered were numbered consecutively at the hearing starting with 181. In addition, the Hearing Officer marked counsel’s correspondence collectively as Court Exhibit 1. (March 11, 2009 Transcript at 4 *ff.*) The hearing was conducted on March 11 and 12, 2009. The transcripts are separately numbered and cited accordingly herein.

⁷ On March 9, 2009, just two days before the scheduled start of the hearing, Dopp initiated a proceeding against the Commission pursuant to Article 78 of the Civil Practice Law and Rules. Dopp v. New York State Commission on Public Integrity, Index No. 1832-09 (Sup. Ct. Albany Co.). Justice Joseph Teresi, to whom the proceeding was assigned, denied those portions of Dopp’s proposed Order to Show Cause that would have enjoined the Commission from commencing the hearing pending the Court’s resolution of the Article 78 Petition. The Court set a schedule for the Commission’s response, Dopp’s reply and the Court’s decision. On March 16, 2009, however, Dopp voluntarily discontinued the Article 78 proceeding pursuant to CPLR Rule 3217(a)(1). Having failed to obtain a delay from the Court, Dopp notified the Hearing Officer on the day before the hearing started that he would not participate in the hearing.

III. Hearing Officer's Decision

On June 9, 2009, the Hearing Officer issued a Decision. The Decision is based on the record which, pursuant to 19 NYCRR Part 941.17(a), consists of the following:

1. all notices, pleadings, motions, and intermediate rulings;
2. evidence presented;
3. a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose;
4. questions and offers of proof, objections thereto, and rulings thereon;
5. proposed findings and exceptions, if any; and
6. any decision, determination, opinion, order or report rendered.

The Hearing Officer found, based on the uncontroverted evidence the Commission submitted at the hearing, that Dopp violated Public Officers Law §74(3)(d) and (h). Specifically, with respect to subsection (d), she found the record evidence established that Dopp used his position as Communications Director to the Governor “to secure unwarranted privileges or exemptions for himself and the Governor when he abused the authority given him by the position to obtain information from the State Police that was neither generally kept nor publically available, which he then used to discredit a political foe of Governor Spitzer, Senator Joseph Bruno.” (Decision at 11)

The Hearing Officer found that Dopp’s violation of subsection (d) was knowing and intentional, since the evidence established that Dopp was “fully aware of his very specific actions and conduct.” (Decision at 15) Thus, the Hearing Officer determined that the Commission had established a basis for imposing a civil penalty for Dopp’s violation of subsection (d) pursuant to Public Officers Law §74(4). (*Id.*) The Hearing Officer recommended a \$5,000 civil penalty, half of the maximum that may be imposed for a violation of subsection (d), since in her view it was unclear whether Dopp used his official position to secure unwarranted privileges for himself or if he did so, only on behalf of others. (Decision at 15) The Hearing Officer recommended no additional penalty for Dopp’s violation of subsection (h), since the law does not authorize any specific penalty for such a violation. (*Id.*)

On June 19, 2009, Dopp’s counsel timely submitted a letter that constituted Dopp’s Reply. Commission staff forwarded copies of the Hearing Record, the Decision and Dopp’s Reply to all participating Commissioners.

IV. Dopp's Reply

Dopp’s Reply essentially has two aspects. First, he maintains that the “crux of the case is that official documents were recreated and that this act constituted misuse of the State Police.” (Reply at 1) The Reply contends that the determinative questions are (1) whether there was

sufficient evidence that Dopp ordered recreation of records; and (2) whether releasing accurate information about the use of State aircraft was improper. (*Id.*) Second, relying on the Inspector General's May 13, 2009 report, Dopp essentially maintains that alleged misconduct by the Commission's Executive Director, coupled with the Commission's claimed unwillingness or failure to address it, "so tainted the investigative process, and the resulting Notice of Reasonable Cause, that dismissal in the interest of justice is now the only fair resolution of this matter." (Reply at 4) Without providing any specific example or even allegation, Dopp further maintains that "the Notice of Reasonable Cause was based upon testimony of witnesses who *could* shape their stories based upon leaked information." (Reply at 5 [emphasis supplied]) Further, again without specifics, Dopp contends that the Executive Director intended "that the testimony of subsequent witnesses [*i.e.*, those whom the Commission interviewed after Dopp during the investigation] be tailored based on Mr. Dopp's testimony to inculcate Mr. Dopp and exonerate the subsequent witnesses and others." (Reply at 6)

Throughout Dopp's Reply, he relies extensively on testimony and other evidence that was not introduced at the hearing. With respect to the Hearing Officer's Decision, Dopp repeatedly cites transcripts not admitted as evidence at the hearing of interviews that the Commission conducted during the Commission's investigation that resulted in the NORC.⁸ With respect to his contentions that alleged misconduct by the Commission's Executive Director "tainted" the Decision, Dopp cites and relies on the May 13, 2009 Report of the Inspector General, which was also not offered or admitted in evidence at the hearing.

V. Discussion

A. *Dopp's Misuse Of State Police Violated Public Officers Law §74(3)(d) and (h)*

In this case we need not and do not reach the broad policy question of when an incumbent public official misuses public office for political gain by using public resources available to him or her. The inquiry here is much narrower. The allegation against Dopp focuses on the improper use of State Police resources for political purposes and the special access that Dopp had to those resources as the Governor's Communications Director. In addition, we consider evidence that public release of the information Dopp sought and obtained raised security concerns and evidence that the documents Dopp released to a newspaper reporter for publication were created at Dopp's direction and to his specifications. It is worth repeating the Hearing Officer's finding that "Dopp used [his] position to secure unwarranted privileges or exemptions for himself and the Governor when he abused the authority given him by the position to obtain information from the State Police *that was neither generally kept by them nor publicly available*, which he then used to discredit a political foe of Governor Spitzer, Senator Joe Bruno." (emphasis added) (Decision at 11)

⁸ Although Dopp chose not to participate in the hearing, he had full access to the hearing record. The Commission provided Dopp's counsel with the complete hearing transcript as well as all exhibits admitted into evidence as part of the hearing record.

This decision need not rehash the description and summary of the evidence presented at the hearing that Dopp chose not to attend. The staff of the Commission, as thoroughly documented by the Hearing Officer in the Decision, presented evidence that was admitted and now constitutes the closed record, which is the only evidence on which we are permitted to rely. The hearing record overwhelmingly supports the Hearing Officer's findings, which we endorse and adopt as our own.⁹

Of particular note is the Hearing Officer's marshalling of the record that demonstrates that Dopp's single-minded efforts were focused on obtaining written itineraries that the State Police had never kept and, in this case, did not keep, in the ordinary course of their duties and operations. (Decision at 9-10) Nonetheless, as a result of Dopp's persistence, at least one State Police officer recreated from memory the events of each Bruno trip to New York City and provided it to his superior who typed it up on non-State Police forms and provided it to his superior who, ultimately, provided it to Dopp. (Decision at 9-10) From the face of the document it was clear that it was not a form or report generated by the State Police in the ordinary course of business. (Decision at 11) But Dopp not only accepted it, he insisted that it be reformatted into three separate documents—one for each Bruno trip—on “bond” paper with specific headings that he requested. (Decision at 8) Even then he was disappointed in the particular form of the documents that he received, but because he was in a rush to provide the documents to the Albany Times Union's Jim Odatto for an exclusive story, he accepted the “imperfect” documents that were ultimately published in the newspaper. (Decision at 8)

Also of particular note is the undisputed evidence in the record of the nature of the information that comprised the itineraries. Each described in detail where and when Senator Bruno, third in the line of succession to the Governor, visited in New York City during each trip. We cannot second-guess the testimony at the hearing of the former superintendent of the State Police and the FOIL Officer of that agency who opined that this was sensitive information that the State Police would not have released to the public. The undisputed hearing record evidence demonstrates that even after-the-fact descriptions of the itineraries of public officials should not be made publicly available. That security determination is not diminished by the fact that some important officials publicly distribute their itineraries. Obviously, in such cases, security determinations fit the circumstances and are taken into account before and after the official travels. In this case, unbeknownst to Senator Bruno, Dopp arranged for publication of his destinations and schedules without any apparent concern for Senator Bruno's security. In doing so, he also subverted, or at least diluted, a critical responsibility of the State Police—to protect

⁹ Although we adopt the Hearing Officer's findings, we note that the hearing record evidence does not include specific evidence of the following statement on page 12 of the Decision, which was not material to the Decision and is not material to this Decision and Notice of Civil Assessment: “[Dopp] had been previously told by his boss, Richard Baum, that the Governor's Office was not to ask for ground itineraries when a member of the Legislature sought permission to use State aircraft.” Baum testified that he told Marlene Turner, the Executive Chamber official responsible for approving requests to use the State aircraft, not to require ground itineraries as part of the approval process. March 11 Transcript at 72. We agree with the Hearing Officer, however, that it is logical to infer that Dopp became aware of Baum's decision not to require ground itineraries as part of the Executive Chamber's process to obtain approval to use State aircraft.

State officials. Executive Law §223; *see also Masi v. Kirwan*, 60 Misc.2d 103 (Sup. Ct. Albany Co. 1968) (in upholding prohibition against outside employment, describing State Police as quasi-military organization charged with protecting people of the State of New York and their property); Testimony of Former State Police Superintendent Wayne Bennett, March 12 Transcript at 86-87; Decision at 10.

Taken as a whole, the seven aspects of Dopp's scheme plainly violated Public Officers Law §74(3)(d): 1. Using his official position; 2. to appropriate public resources and personnel; 3. to create otherwise unavailable information; 4. that is sensitive; 5. in documents purporting to be official records which would not otherwise have been made or kept; 6. for public distribution; 7. to serve the political interests of his superior. That is this case. Another case may present different factors that also may violate Public Officers Law §74(3)(d). In other words, each of the seven points above is not, in our view, a necessary element of every Public Officers Law §74(3)(d) violation. Rather, Dopp violated Public Officers Law §74(3)(d) by using his official position to obtain an unwarranted privilege. Dopp's actions, as shown by the hearing record, constituted more than enough deviation from proper official conduct to support an appropriate sanction under the unwarranted privileges or exemptions prohibition, which the Commission has decided to impose in this proceeding.

Resolution of the Public Officers Law §74(3)(h) allegation flows inexorably from the conclusions we reach that support our finding that Public Officers Law §74(3)(d) was violated. Public Officers Law §74(3)(h) provides, in pertinent part, as follows:

An officer or employee of a state agency...should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

The findings of the Hearing Officer that we adopt need no further explanation to support the conclusion that Dopp violated Public Officers Law §74(3)(h). Of particular note in this regard is the similarity between the memorandum Dopp prepared after he received the recreated itineraries (Commission's Exhibit 67) and the article that appeared in the Albany Times Union authored by the reporter whom Dopp had cultivated for this "exclusive" (Commission's Exhibit 85). Like the manipulation of the State Police, this activity—to virtually author a highly critical newspaper article about a political opponent—is thoroughly corrosive of the public trust. Using sensitive documents, recreated by the State Police, exceeds even the most conservative interpretation of what Public Officers Law §74(3)(h) seeks to prohibit.¹⁰

¹⁰ The hearing record belies Dopp's argument that, rather than trying to damage Senator Bruno politically, he was responsible for monitoring Senator Bruno's use of State aircraft, did so at the direction of other senior administration officials, and then, in response to a reporter's request, released that information publicly. For example, the FOIL officers for the Executive Chamber and the State Police testified that in responding to a FOIL request an agency is required neither to create records nor to seek responsive records from any other agency. These two FOIL officers opined that the documents Dopp released were not responsive to the FOIL request he had in hand when he released the documents. (Decision at 4-5)

B. *Dopp Instructed The State Police To Create Senator Bruno's Itineraries*

Dopp asserts in his reply that the “crux of the case” is that he caused the creation of official documents. He asserts that there is no evidence that he did so. (Reply at 1) The hearing record evidence supports the Hearing Officer’s determination that Dopp caused the creation of Exhibits 1 through 3. (Decision at 8, ¶19)

As the Hearing Officer found, based on the hearing record evidence, Dopp directed the creation of records and knew that some of the documents he provided to a news reporter were created at his request and would not otherwise have existed. (*See Generally* March 12, 2009 Transcript at 42 through 45) Exhibit 23 is a one-page document that, among other information, lists the State Police Investigators primarily responsible for driving Senator Bruno during three trips to New York City that occurred on May 3 and 4, May 17 and May 24. This document also describes Senator Bruno’s ground itineraries for these three trips— the places he went and the times he went to them. Howard testified that he received Exhibit 23 *via* email. (March 12 Transcript at 41, 43) After Howard received Exhibit 23, he took the document to Dopp. (*Id.*) After reviewing Exhibit 23, Dopp asked Howard whether the document could be separated into three documents, each with a heading. (*Id.* at 43) Howard then called Felton and relayed Dopp’s request to separate Exhibit 23 into three documents, each one pertaining to a separate trip with a heading. (*Id.* at 44-45) Thereafter, on or about June 6, 2007, Felton sent an email to Howard with three documents attached to it. (Exhibit 35, *id.* at 42, 45-46) The documents attached to Exhibit 35 are Exhibits 1, 2 and 3. (*Id.* at 46) Exhibits 1 through 3 each have the same heading: “Transportation Assignment for Senator Joseph Bruno.” Exhibit 1 sets forth Senator Bruno’s ground itinerary for his trip to New York City on May 3 and 4, 2007. Exhibit 2 sets forth Senator Bruno’s ground itinerary for his trip to New York City on May 17, 2007. Exhibit 3 sets forth Senator Bruno’s ground itinerary for his trip to New York City on May 24, 2007. After receiving these three documents, Howard showed them to Dopp, who expressed some unhappiness with the headings to Howard but eventually said, “That’s fine. Thanks. And that was it. [Howard] left his office.” (*Id.* at 47) When Howard left Dopp’s office, he left Exhibits 1 through 3 with Dopp. (*Id.*)

Major Michael Kopy (“Kopy”), a sworn member of the New York State Police since 1986, who has been the Troop Commander in charge of State Police Troop New York City since March 2007 (March 12 Transcript at 68),¹¹ and Senior Investigator Anthony Williams (“Williams”), who was assigned to Troop New York City during the relevant time period, explained the circumstances under which the above-referenced exhibits were created. According to Kopy, in May 2007, Felton asked Kopy for information regarding ground transportation provided to State officials. (*Id.* at 73) When Kopy informed Felton during a telephone conversation that he had determined the State Police did not have the requested information, in a

¹¹ Kopy testified that, as Troop Commander, he was “responsible for all activities within the five boroughs of the City as they pertain to the Division of State Police.” (*Id.* at 69.)

subsequent telephone conversation that Felton initiated, Felton told Kopy to reconstruct the events. (*Id.* at 74) Kopy then asked subordinates to gather the requested information and, in response, Williams provided Kopy with Exhibit 23. (*Id.* at 64-65, 75)¹² Kopy sent Exhibit 23 to the Superintendent's office *via* facsimile. (*See* Exhibit 22 [fax cover sheet bearing Kopy's handwriting]; March 12 Transcript at 76) During a telephone conversation with the Superintendent regarding Exhibit 23, Kopy made the following handwritten notations on his copy of the document based on Felton's comments:

Sep Pages
Trip to Sen Bruno
Bond Paper

(March 12 Transcript at 78) These notes closely mirror Howard's testimony as to what format Dopp requested when he first saw Exhibit 23. (Decision at 8)

Exhibits 1 through 3 include information not included on Exhibit 23, such information consists of Kopy's assumptions, rather than information supplied to him, as well as information supplied to him in conversations with Williams that occurred after the preparation of Exhibit 23. (*Id.* at 81-82)

In sum, based on the hearing record evidence, summarized above, the Commission agrees with the Hearing Officer's findings that the documents Howard supplied to Dopp regarding Senator Bruno's ground itineraries were created and that they were created at Dopp's specific request and formatted in a manner that Dopp directed and, ultimately, found to be acceptable. But for Dopp's request, these documents would never have been brought into existence.

The other two questions Dopp raises in his reply-- whether Howard expressed concern about releasing the records and whether Dopp checked with Howard to determine if it was "ok" to release the records-- are not relevant to the issue of whether Dopp caused the creation of documents.

C. *Accuracy Of The Information Dopp Caused To Be Released Is Not Determinative*

Dopp also maintains that it was not "inherently wrong" for him to release accurate information about the use of State aircraft. (Reply at 2) In this regard, Dopp focuses on only one part of his actions that are the basis for the Hearing Officer's determination that he violated subsection (d). As set forth above, and in the NORC and the Decision, Dopp did not violate the Public Officers Law merely because he released documents and information. Rather, Dopp

¹² Williams testified that, with respect to the May 17 trip, Exhibit 23 inadvertently misidentified the State Police Investigator responsible for driving Senator Bruno because the initially assigned investigator was not available and another investigator was subsequently re-assigned. (March 12 Transcript at 66.)

violated the Public Officers Law because he misused the State Police to gather information and create sensitive, non-public documents that he then released for a non-governmental purpose. Thus, the Commission need not and does not consider whether mere release of information, accurate or otherwise, would violate Public Officers Law §74(3)(d).¹³

D. *Executive Director's Alleged Improper Conduct Does Not Warrant Dismissal*

Relying on the State Inspector General's May 13, 2009 report, Dopp maintains that "the Executive Director's [alleged] misconduct, coupled with the [Commission's] unwillingness or failure to address it, was pervasive and has so tainted the investigation process, and the resulting Notice of Reasonable Cause, that dismissal in the interest of justice is now the only fair resolution of this matter." (Reply at 4)¹⁴ Dopp maintains, without providing any specifics, "that the entire crafting of the Notice of Reasonable Cause was based upon witnesses who *could* shape their stories based upon leaked information." (Reply at 5 [emphasis supplied])¹⁵

The Commission rejects Dopp's contention that the former Executive Director's alleged improper conduct warrants a dismissal of the NORC. This contention is based on evidence that is not part of the hearing record and Dopp abandoned his opportunity to make such evidence part of the hearing record.

Were the Commission to consider Dopp's contention on its merits, Dopp's argument would fail for several reasons. The Inspector General's report does not allege or support an allegation that the Commission's former Executive Director directly or indirectly provided the

¹³ We also note, as discussed above in footnote 12, the information Dopp released was not accurate because of the manner in which the documents Dopp released were prepared, although in this case the error in the documents does not appear to be material. But the potential for serious error is inherent when official-looking documents are created and released without the normal checks and balances required by agency policy and State law.

¹⁴ The Inspector General's report was issued two months after the Dopp hearing was held. Nevertheless, Dopp was aware of the allegations against the Commission's former Executive Director. Indeed, Dopp sought to utilize this information as a tactic. In letters to the Hearing Officer that his counsel sent months before the hearing commenced, Dopp raised essentially the same allegations upon which he relies in his reply. (See Court Exhibit 1; March 11, 2009 Transcript at 5-14.) As the Hearing Officer explained at length on the record (March 11, 2009 Transcript at 5-14), while these allegations did not support Dopp's request to delay the hearing, Dopp could have sought to introduce evidence regarding the alleged misconduct at the hearing. He chose not to do so.

¹⁵ By contrast, as the Commission's new Chairman said in a statement issued on June 11, 2009, while not a basis for this Decision and Notice of Civil Assessment, we note: "The information-- the fact that the Commission had consulted with the District Attorney about a possible perjury committed by an individual formerly in the Governor's employment -- was simply not significant. It does not appear to have given the former Governor or his staff any particular advantage. It does not appear to have had any material impact on any investigation. It also does not appear to have been provided by Mr. Teitelbaum for any sinister motive."

Executive Chamber or any witness interviewed in the course of the Commission's investigation with information they *could* use to "shape their stories."¹⁶

In addition, Dopp has not provided even a single example of a witness who *could* have shaped his or her hearing testimony or, to the extent it is material, his or her testimony during the Commission's investigation. In this regard, it is important to note that virtually all of the individuals the Commission interviewed during the investigation had previously been interviewed, some on more than one occasion, in the course of prior investigations conducted by the Inspector General, the Attorney General and/or the Albany County District Attorney. Dopp has not attempted to show how the testimony of such witnesses during the hearing or the Commission's investigation was materially different from their previous testimony during one or more of the prior investigations. In other words, Dopp has not even attempted to make a *prima facie* showing that any of the alleged wrongdoing cited by the Inspector General materially impacted the hearing or investigation testimony of even a single witness. Notably, Dopp studiously ignores that the two witnesses whose hearing testimony directly concerned Dopp's material actions, Baum and Howard, were interviewed by the Commission *before* the Commission interviewed Dopp.¹⁷

The former Executive Director's alleged improper conduct during the Troopergate investigation does not undermine the *bona fides* of the civil charges set forth in the NORC that resulted from the administrative investigation.¹⁸ Under these circumstances, the former Executive Director's alleged misconduct does not provide a basis for dismissing the NORC.¹⁹

¹⁶ The Inspector General's report itself identifies two areas of alleged improper disclosures by the Commission's former Executive Director. The first was an allegation that the former Executive Director essentially told a member of the Governor's cabinet that the Executive Chamber should be more forthcoming in response to Commission document requests. See Report of State Inspector General, Executive Summary, at 2-5. The other was an allegation that the former Executive Director told the same member of the Governor's cabinet that the Commission had consulted with the Albany County District Attorney regarding a possible perjury matter arising out of Dopp's sworn interview conducted as part of the Commission's investigation. See *Id.* at 5-8.

¹⁷ The Commission interviewed Dopp on October 11, 2007. Baum was interviewed on October 5 and Howard was first interviewed on October 9.

¹⁸ While we need not reach this issue in this case, we note that an administrative investigation is not an adversarial proceeding and does not result in a judgment or determination of guilt or legal rights. It is well settled that when the investigative powers of an agency are utilized, substantive due process considerations do not attach. See *Generally American Jurisprudence*, Administrative Law §120 (2d Ed. 2008) ("As long as no legal rights are adversely determined during the investigation, the demands of due process are satisfied if procedural rights are granted in the subsequent proceedings.") Dopp was afforded procedural due process rights in the subsequent Commission proceedings that, except for submitting a Reply to the Decision, he chose to ignore. For example, Dopp chose not to move for a dismissal of the NORC, not to seek discovery beyond access to the investigation record, which Dopp was afforded, not to present evidence in his own behalf at the hearing and not to challenge evidence presented by the Commission at the hearing.

¹⁹ The Commission is not aware of, and Dopp has not cited, any decision or authority supporting Dopp's suggestion that the former Executive Director's alleged misconduct warrants, let alone requires, dismissal of the NORC. The Inspector General's report does not suggest that any of the former Executive Director's alleged improper conduct

Finally, dismissal of the NORC in the interest of justice is not warranted. Nor will the Commission dispose of this matter on the basis that “it is time to close the book on this matter, not start a new chapter” (Reply 6), an apparent reference in Dopp’s Reply to Dopp’s repeated public criticisms of the Commission.

VI. Civil Penalty Determination

The Hearing Officer recommended that, since it was not clear in her view whether Dopp sought an unwarranted privilege for himself or on behalf of another, a civil penalty in the amount of \$5,000 is appropriate for Dopp’s knowing and intentional violation of subsection (d). The Hearing Officer also recommended that, since the statute does not authorize a civil penalty for Dopp’s violation of subsection (h) and, since he is no longer in State service, no other penalty may be imposed at this time.

The Commission believes that a civil penalty of \$10,000, the maximum allowed by law for a knowing and intentional violation of subsection (d), is mandated in this case. Dopp misused the resources of the State Police, a law enforcement agency with an honorable 92-year history of serving and protecting the people of New York State, to obtain from them sensitive information, that he directed be memorialized in official-looking documents that the State Police created at Dopp’s direction to his specifications, and that he then publicly disclosed to gain a political advantage. In so doing, Dopp compromised the honor and integrity of this State’s premiere law enforcement agency to advance a political, rather than a governmental, purpose. Such distortions of the State Police mission must be appropriately sanctioned. Otherwise, the physical well-being of citizens the State Police are mandated to protect could be jeopardized. No State agency or public official should ever succumb to an unethical request by those in higher authority. Dopp’s conduct can only be described as an abuse of his official position and a disregard for the public trust.

VII. Conclusion

The Commission confirms and adopts as its own the Hearing Officer’s factual findings and legal conclusions. The Hearing Officer properly found, based on the record evidence presented at the hearing, that Dopp knowingly and intentionally violated Public Officers Law §74(3)(d) and that he violated subsection (h). The Commission imposes a civil penalty of \$10,000 for Dopp’s knowing and intentional violation of subsection (d) and imposes no monetary or other penalty for his violation of subsection (h).²⁰ Since Dopp is no longer in State

undermined the Commission’s determination that there was reasonable cause to believe Dopp violated the Public Officers Law in the manner alleged in the NORC.

²⁰ Neither this Commission nor the Ethics Commission has considered a Hearing Officer’s recommended civil penalty for a Public Officers Law §74 violation or a proposed settlement of a NORC alleging such a violation. The Ethics Commission was not statutorily authorized to impose a monetary penalty for any violation of Public Officers Law §74. PEERA authorizes this Commission to impose a civil penalty for a knowing and intentional violation of

service, there is no basis on which to refer this matter to his former appointing authority for possible disciplinary action.

Michael G. Cherkasky

Chairman

Daniel R. Alonso

Virginia M. Apuzzo

John M. Brickman

Richard D. Emery

Daniel J. French

David L. Gruenberg

Hon. James P. King

Steven C. Krane

Hon. Howard A. Levine

Loretta E. Lynch

John T. Mitchell

Members

DATED: October 7, 2009

Attachment: Hearing Officer's Decision and Recommendation (June 9, 2009)

Public Officers Law §74(3)(d) and certain other subsections, but we have not had occasion to consider doing so previously.

STATE OF NEW YORK

COUNTY OF ALBANY

In the Matter of DARREN DOPP, former
Communications Director to former Governor
Eliot Spitzer

Respondent

**Alleged violation of Section 74(3)(d) and (h) of the Public
Officers Law**

A Notice of Reasonable Cause was issued in this matter on July 24, 2008, a pre-hearing conference was held in October 2008, and a telephone conference was held on March 5, 2009. The Commission was represented by Barry Ginsberg, Esq. and Bridget E. Holohan, Esq. while the Respondent was represented by Michael Koenig, Esq. A hearing commenced on March 11, 2009 and concluded on March 12, 2009. On March 10, 2009, by letter, the Commission was informed by Mr. Koenig that neither he nor his client would appear at the hearing (Court Exhibit 1). Following receipt of that letter, a second telephone conference was held and Mr. Koenig was informed that the hearing would proceed despite his absence. Hence, the hearing was conducted as a default proceeding, although Mr. Koenig was informed - in the March 10th telephone conference and at the commencement of the hearing - that he and/or respondent were welcome to participate in the proceeding at any time, and that a counsel's table would be maintained during the hearing for that purpose. Neither Mr. Koenig nor Mr. Dopp appeared at any time during the proceeding.

Respondent Dopp is charged with violating Section 74(3), paragraphs (d) and (h), of the Public Officers Law ("POL"). Paragraph (d) prohibits an officer or employee of a State agency, member of the legislature or legislative employee from using or attempting to use his official position to secure unwarranted privileges or exemptions for himself or others, while paragraph (h) states that such officer, employee, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his public trust. These alleged violations came to light during a 2007 investigation into the alleged misuse of resources of the State Police by various State employees, including Darren Dopp.

It is undisputed that Respondent was the Communications Director for then Governor Eliot Spitzer - who took office January 1, 2007 (March 11th transcript, testimony of Richard Baum, Secretary to then Governor Spitzer, who testified that he had frequent conversations with Mr. Dopp, p. 61, 64- 65). Included within the definition of "state officer or employee" for purposes of the Public Officers Law are officers and employees of statewide elected officials [POL Section 73(1)(h)(ii)]. Hence, it is clear that Mr. Dopp is subject to the provisions of the Public Officers Law.

FINDINGS OF FACT

1. Mr. Dopp began working as a Communications Director for Mr. Spitzer when Mr. Spitzer was Attorney General of the State of New York (March 11th transcript, testimony of Richard Baum, p. 61). Mr. Baum served as Chief of Staff for Attorney General Spitzer while Mr. Dopp was the Communications Director, and was appointed Secretary to Governor Spitzer at the same time Mr. Dopp was appointed Communication Director for the Governor (March 11th transcript, testimony of Mr. Baum, p. 60-64).

2. The duties of the Communications Director in the Governor's Office include creating overall communications strategies for the Governor, with such strategies to cover communications by speeches and appearances, as well as schedules and overall press communications (March 11th transcript, testimony of Mr. Baum, p. 62-66). The job did not include an investigative function or any duty to monitor State resources (*Id.*).

3. One of the State resources controlled by the Governor's Office was the use of State aircraft. A member of the Governor's staff was responsible for approving requests from outside the Executive Chamber for the use of State aircraft. During the Spitzer Administration, Marlene Turner, Chief of Staff to Governor Spitzer, was responsible, among other duties, for getting the correct form filled out and for then approving the use of the aircraft (March 11th transcript, testimony of Mr. Baum, p. 69-71). Early in the Spitzer Administration, Ken Riddette, an employee of the NYS Senate, contacted the Governor's Office with a complaint about these forms. The form Senate Majority Leader Bruno was asked to complete had a question relating to his itinerary. Mr. Riddette objected to that question on the grounds that a representative of one branch of government should not be required to inform another branch of government where it is going and what it is going to do simply because it's using State resources. Mr. Baum agreed and informed Marlene Turner not to request an itinerary from Senator Bruno when he requested the use of a State aircraft (March 11th transcript, testimony of Mr. Baum, p. 72-74).

4. At some point, Mr. Dopp informed Mr. Baum that the press was interested in the use of State aircraft, and that the Governor's Office received a media request for information about the use of all State aircraft, probably in May 2007 (March 11th transcript, testimony of Mr. Baum, p. 74-75). Mr. Baum testified that, at that time, he had no reason to believe the Governor's Office had any information about ground itineraries for Senator Bruno in light of his earlier instruction to Marlene Turner to discontinue the practice of seeking such information from members of the Legislature. Nonetheless, on May 17, 2007, Mr. Baum received an e-mail from Mr. Dopp containing a proposed "Statement by Darren Dopp, Communications Director for the Governor, Regarding Senator Bruno's Use of State Aircraft", which stated that use of State aircraft was limited to official State business and that the Governor's Office had learned that the Senator had departed that morning with three staff members for a "legislative meeting" and that "our office learned" that meetings were to be held at C.V. Starr & Co. at 12:30 and at the Sheraton Hotel at 3:30 and that "[W]e have asked the Senator to verify that these meetings involve official State business" (March 11th transcript, testimony of Mr. Baum, p. 75-76;

Commission's Exhibit 41). Mr. Baum testified that he, Mr. Dopp and Governor Spitzer had a telephone conference call pursuant to a request from the Governor (Commission's Exhibit 76) regarding the release of Mr. Dopp's statement, and that Mr. Dopp had drafted it in order to allow the Governor to get "ahead" of the story so the Governor would not appear to have been aware of any possible inappropriate use of State transportation, since there had been a similar controversy a short time earlier about Comptroller Hevesi's use of State vehicles, which resulted in political fallout. There was disagreement about whether the ruffled feathers that would likely result from release of the statement - considering that Senator Bruno and Governor Spitzer were engaged in a "fairly intense debate over some issues" at this time - would be worth this attempt to get ahead of the story and, in the end, the three agreed "we weren't going to do this" (release the statement) but would comply with any media request in the ordinary fashion. Accordingly, Mr. Baum testified in response to the question "Did you have an understanding about whether or not Mr. Dopp was told to continue to monitor Senator Bruno's use of the State aircraft?" that he did not recall use of the term "monitoring" (March 11th transcript, testimony of Mr. Baum, p. 78-80) nor did he recall any conversation about pursuing the aircraft issue as a story the Governor's Office would want to put out at some future time (*supra*, p. 82).

5. Nonetheless, this view changed after July 1, 2007 when the *Times Union* (an Albany, N.Y. newspaper) published an article about Senator Bruno allegedly using State aircraft to fly to political fund-raisers (Commission's Exhibit 85). Mr. Baum testified that prior to the publication there had been conversation about referring the issue of Senator Bruno's use of aircraft to the Inspector General or someone else so it would not look like the Governor knew about it and failed to take action, but that he did not favor such a referral because he believed that the use of State aircraft was fairly flexible and that as long as the Senator was doing some official thing, talking to someone about some State issue, the use of the aircraft was at least arguably legitimate. "It's a pretty porous set of rules about the use of State aircraft." Nonetheless, Mr. Baum testified that once the *Times Union* published the article. . . "After it came out, I felt that we had to do something. . . Someone independent had to take a look at it" (March 11th transcript, testimony of Mr. Baum, p. 82-85; Commission's Exhibit 148).

6. In the meantime, Mr. Baum had received an earlier e-mail from Mr. Dopp relating to a previous article in the *Times Union*, which mentioned an ongoing Justice Department investigation of Senator Bruno. On June 3, 2007, Mr. Dopp sent Mr. Baum an e-mail referencing the "ATU"- article in the *Times Union* - stating "I guess we know why Bruno's folks have been so jumpy of late" and concluding "Think a travel story would fit nicely in the mix." Nonetheless, Mr. Baum testified that he was unaware of any internal review by Mr. Dopp of Senator Bruno's use of State aircraft from January 2007 until the publication of the June 3rd article (Commission's Exhibit 47; March 11th transcript, p. 86-88).

7. Mr. Baum's testimony concluded at this point, but it should be noted that he had signed a Disposition Agreement with the New York State Commission on Public Integrity on July 8, 2008 in which he admitted that he violated Public Officer's Law Section 74(3)(h) when he became aware that "Darren Dopp, Communications Director for the Executive Chamber and

William Howard, Assistant Secretary for Homeland Security, were gathering documents from the State Police concerning the travel of Senator Joseph Bruno and did not assure that there would be no improper use of the State Police" (Commission's Exhibit 182). Execution of this agreement by Mr. Baum terminated all enforcement proceedings against him by the State Commission on Public Integrity (*Id.*). In addition, Mr. Baum executed an affidavit in connection with that Disposition stating that "Apart from the testimony given by me on October 5, 2007, I have no knowledge of any other person (i) participating in the gathering, creation or dissemination of information or documents, as the case may be, by the State Police in 2007 concerning Senator Bruno's travel; or (ii) having personal knowledge of the conduct set forth in said paragraph (i) above" (Commission's Exhibit 183). Finally, Mr. Baum testified that at the time he executed these documents he was represented by counsel and he believed the statements made in the documents to be true and accurate to the best of his knowledge (March 11th transcript, testimony of Mr. Baum, p. 58-60).

8. During his testimony, Mr. Baum made reference to media interest in the use of State aircraft. He testified that he had been informed by Mr. Dopp that "...there was a request for information about all use of State aircraft by any elected official," that he thought it was in May 2007 but, that he was never given anything in writing indicating such a request (March 11th transcript, testimony of Mr. Dopp, p. 74-75). Hence, it is unclear what request Mr. Dopp was referring to when he mentioned it to Mr. Baum. However, in July 2007 there was a specific request from James Odato, a reporter for the *Times Union* Capitol Bureau, which was referred to Mariya Treisman, an Assistant Counsel to the Governor and the Records Access Officer for the Executive Chamber (March 11th transcript, testimony of Ms. Treisman, p. 89-91).

9. Ms. Treisman testified about her duties as Records Access Officer: she was the only one in the Executive Chamber authorized to reply to Freedom of Information Law ("FOIL") requests; she replied to them all in writing; and she responded in the order that she received them (*supra*, p. 95-96). On August 14, 2007, Ms. Treisman responded to Mr. Odato's request for records [which referenced an earlier request on June 27, 2007, sent in the form of a letter to Mr. Dopp (*see*, Commission's Exhibit 66)] "through the end of June 2007 that 'identify the use of the State aircraft by Governor Eliot Spitzer, Lieutenant Governor David Patterson, Comptroller Thomas DiNapoli, Senate Majority Leader Joseph Bruno, Assembly Speaker Sheldon Silver, Assembly Minority Leader James Tedisco and Senate Minority Leader Malcom Smith' " (Commission's Exhibit 88). She testified that the request was made July 10, 2007, that she responded on August 14, 2007, that in the ordinary course of business she received FOIL requests from both the press and non-press members of the public and that if a request resulted in fewer than 40 pages of documents that needed to be sent in response, the Executive Chamber waived the twenty-five cents per page copying fee (March 11th transcript, testimony of Ms. Treisman, p. 97-99). She also testified that Commission's Exhibit 92 appeared to contain the pages she sent in response to Mr. Odato's FOIL request and that those pages contained some information that was redacted because it was exempt under the Freedom of Information Law (*supra*, p. 100-103). It should be noted that Exhibit 92 contains a ground itinerary, or daily schedule, only for the Governor and Lieutenant Governor.

10. In addition, Ms. Treisman stated that FOIL did not require an agency to create or recreate documents in response to a request, and that if a request referred to documents that were maintained by another agency outside the Executive Chamber she would so inform the person who had made the FOIL request. In addition, she testified that while she was the FOIL Officer for the Executive Chamber she did not request or obtain records from the State Police in order to respond to a FOIL request and she believed her responsibility was "to respond to FOIL requests made of the Executive Chamber and only the Executive Chamber and not other State agencies." (*Supra*, p. 105). In response to a question about the request made by Mr. Odatto to Mr. Dopp on June 27, 2007, Ms. Treisman testified that she would consider the request a FOIL matter as the reference line stated it was a freedom of information request and that, in the ordinary course, when such a request came into the Executive Chamber it would be referred to her for action but in this case that must not have happened as she did not recall that letter having been forwarded to her for a response (March 11th transcript, testimony of Ms. Treisman, p. 106-7; Commission's Exhibit 66). Nonetheless, when she later received Mr. Odatto's FOIL request dated July 10, 2007 - which was first e-mailed to Mr. Dopp and forwarded by him to Ms. Treisman - it referred to the original June 27th request. Upon comparing these two requests (Commission's Exhibit 66 - the original June 27th request to Mr. Dopp, and Commission's Exhibit 88 - the amended July 10th request forwarded by Mr. Dopp to Ms. Treisman) she noted that they were nearly identical except for a clarification that Mr. Odatto was following up on his June 27th request and was now requesting information through the end of June 2007 and was seeking not only "any materials that would explain the purpose of the trips, itineraries, manifests and the schedules for Governor Spitzer and Lieutenant Governor Patterson" but also "and anyone else on the list for which you have such materials" (the list, as quoted above, included Senator Bruno and other Legislative leaders as well as the Governor and Lieutenant Governor). (March 11th transcript, testimony of Ms. Treisman, p. 107-110).

11. The Records Access Officer for the State Police, Captain Laurie Wagner, supported Ms. Treisman's testimony. Captain Wagner testified that she had been the Records Access Officer for the State Police for ten years, that she and her staff handle all FOIL requests made to the State Police, that if a request was made for documents that the State Police did not maintain she would so notify the requester, and that the Governor's Office had never in her tenure asked her to provide them with records so that the Executive Chamber could respond to a FOIL request (March 11th transcript, testimony of Captain Wagner, p. 112-115). Upon reviewing Commission's Exhibit 66 (Mr. Odatto's original June 27th request made by letter to Mr. Dopp) she testified that she would consider it a FOIL request that was seeking travel information about the travel of government officials as well as travel itineraries of the Governor and Lieutenant Governor from January 1, 2007 through June 27, 2007. She further testified that in response to that request she would not have included Commission's Exhibits 1, 2 or 3 because those travel itineraries were for Senator Bruno and not the Governor and Lieutenant Governor and so would not be responsive to the June 27th FOIL request (*supra*, p. 116-118; Commission's Exhibits 1, 2, 3 - transportation assignments for Senator Bruno for May 3 - 4, May 17 and May 24, 2007).

12. More information about the operation of the State Police was provided by William Howard. Mr. Howard originally worked for the Pataki Administration where, after September 11th, he became involved with homeland security issues and began to work closely with the State Police (March 12th transcript, testimony of Mr. Howard, p. 6-8). He also became involved during the Pataki years with the use and scheduling of the State aircraft and became generally familiar with the kinds of records maintained by the State Police in connection with the use of State aircraft (*supra*, p. 8-9). When Eliot Spitzer became Governor, Mr. Howard was asked to remain to assist the transition with respect to homeland security issues; he reported to the Deputy Secretary for Public Safety and he focused solely on natural disaster response issues and homeland security. These responsibilities required him to continue the relationship with the State Police he had developed during the Pataki Administration where he worked closely with Preston Felton who was the First Deputy Superintendent who later became Acting Superintendent under Governor Spitzer (*supra*, p. 9-11).

13. Mr. Howard had an indirect reporting relationship with Mr. Baum and he was briefly introduced to Mr. Dopp (*supra*, p.12). In May of 2007, Mr. Howard was contacted by Mr. Dopp and told that Mr. Dopp was attempting to get a leader's meeting arranged but was unable to do so because Senator Bruno had to fly to New York City for a fund-raiser. Mr. Dopp then asked Mr. Howard if he thought Bruno might be taking a State helicopter or aircraft down to the City for political purposes; Mr. Howard replied that he did not know, but "it wouldn't surprise me if they did" (March 12th transcript, testimony of Mr. Howard, p. 14-16). Mr. Dopp then asked him if he could find out. Mr. Howard called Acting Superintendent Felton and asked if Senator Bruno was flying down to New York City. Mr. Felton said he would check into it, and later called Mr. Howard back and reported that the Senator had a trip scheduled for that day and he would try to get more details about it (*supra*, p. 17).

14. Eventually Mr. Howard sent an e-mail to Mr. Dopp at 12:03 pm on May 17, 2007 discussing generally political versus State business use of aircraft and ending his note with the comment that he would be getting "more on the specifics of today with the passengers, etc." (Commission's Exhibit 58; March 12th transcript, testimony of Mr. Howard, p. 17-19). At 12:20 pm on May 17, 2007, Mr. Howard sent another e-mail to Mr. Dopp in which he stated that CV Starr is a global investment bank that holds 2.4 billion shares of AIG stock worth about 2.4 billion and that they are located at 399 Park Avenue. This information (which Mr. Howard obtained from a basic internet search) was provided because Mr. Howard had given Mr. Dopp some general information about Senator Bruno's schedule in New York City, which included a meeting at CV Starr and Mr. Dopp asked about CV Starr (Commission's Exhibit 59; March 12th transcript, testimony of Mr. Howard, p. 20-21). At 12:58 Mr. Howard sent another e-mail to Mr. Dopp stating "I checked the times: 12:30 at CV Starr, 3:30 at Sheraton, 9 am scheduled return flight tomorrow" (Commission's Exhibit 16). This information was based upon oral data Mr. Howard had been given by Acting Superintendent Felton, and may very well have been conveyed to Mr. Dopp prior to Senator Bruno's departure for New York City (March 12th transcript, testimony of Mr. Howard, p. 22).

15. At some time during these exchanges, Mr. Howard received a fax from the State Police showing the ground itinerary for Senator Bruno's travel on State aircraft on May 17 and 18, 2007 (*supra*, p. 23-24; Commission's Exhibit 5). A bit later - on May 21, 2007 at 4:14 pm - Acting Superintendent Felton sent an e-mail to Mr. Howard informing him that the State Police had received "another request for ground transportation from that same individual we had last week in New York City. Do you want us to provide it? And do you want me to do the same documentation we previously talked about for this trip?" (Commission's Exhibit 31.) Mr. Howard testified that the "same individual" referred to Senator Bruno and the "same documentation" referred to that which the State Police had provided on May 17th, something akin to Commission's Exhibit 5, which was a schedule of times and places that Senator Bruno would be visiting after he took a State aircraft to New York City (March 12th transcript, testimony of Mr. Howard, p. 25-26). The e-mail from Mr. Felton to Mr. Howard was later forwarded from Mr. Howard to Mr. Dopp at 7:33 pm on May 21, 2007 with a note that Mr. Howard would be collecting details "as we get these" (Commission's Exhibit 62).

16. Mr. Howard testified that these details would be about the nature of the trip, "similar to what was in Commission's Exhibit 5" (March 12th transcript, testimony of Mr. Howard, p. 28). At 7:18 pm Mr. Howard e-mailed Mr. Felton asking him to call with the details and at 7:36 pm, Mr. Felton replied that he did not yet have them; he only had an inquiry about transportation (Commission's Exhibit 32). Mr. Howard testified that his request for further details was pursuant to a conversation he had with Mr. Dopp. Two days later, on May 23, 2007 at 10:38 am, Mr. Howard forwarded an e-mail to Mr. Dopp. This e-mail had been sent originally to Acting Superintendent Felton from an Anthony Williams, who, Mr. Howard testified, worked for the State Police. Mr. Felton forwarded it to Mr. Howard at 10:27 am (who promptly forwarded it to Mr. Dopp at 10:38 am) with the note, "FYI no hard-copy on this." (Commission's Exhibit 34). Mr. Howard testified that Anthony Williams appeared to be providing details to Mr. Felton about a trip that Senator Bruno had scheduled for the next day, May 24, 2007. He also testified that there were changes in that schedule which he was informed about in a subsequent e-mail from Mr. Felton (March 12th transcript, testimony of Mr. Howard, p. 30-32). This e-mail was sent to Mr. Howard from Mr. Felton at 3:10 pm on May 23, 2007, and was forwarded to Mr. Dopp by Mr. Howard at 8:22 pm on the same day.

17. During this same period in mid-May, Mr. Howard had a discussion with Mr. Dopp pertaining to State Police records. Mr. Dopp was interested in knowing if there were any records preserved relative to the flights taken on the State aircraft. Mr. Howard testified that he informed Mr. Dopp that there were FAA flight records, or flight manifests, that were required to be retained in perpetuity and that those records pertained to the tail number of the plane, a list of passengers, names of pilots, air miles on the plane, etc. These records did not include ground itineraries and Mr. Howard stated that he did not tell Mr. Dopp that itineraries were part of the FAA regulations because to his knowledge, they were not (March 12th transcript, testimony of Mr. Howard, p. 33-35). Nonetheless, on May 23, 2007 at 5:48 pm Mr. Dopp sent an e-mail to Mr. Baum stating that "Bill H", who Mr. Howard testified referred to him, says the records exist and include itineraries. He also stated "Also, I think there is a new and different way to proceed

re media. Will explain tomorrow." (Commission's Exhibit 45.) Mr. Howard testified that he believed that Mr. Dopp misunderstood what the records were that Mr. Howard had referred to. He also testified that he was not aware of what ground itineraries were kept or for how long (March 12th transcript, testimony of Mr. Howard, p. 35-36).

18. The travel records of Senator Bruno were referred to again on June 3, 2007 in a series of e-mails between Mr. Howard and Mr. Baum where they discuss the June 3rd article in the Times Union and how it was unlikely that the Senator would be able to retain his leadership position particularly if the "travel stuff" presented more problems (Commission's Exhibit 48). Mr. Howard testified that he knew travel information was being collected because he was being asked to collect it and to give it to Mr. Dopp, and he assumed that Mr. Baum was aware of that collection and that the "travel stuff" would imply more problems related to the split between government and political or personal use." Mr. Howard stated that he did not know why, or for whom this information was being collected, only that it was being collected from the State Police (March 12th transcript, testimony of Mr. Howard, p. 39-41).

19. On June 6th at 5:10 pm Mr. Howard received an e-mail from Preston Felton with an attachment noted as "transportation assignment" (Commission's Exhibit 35). This e-mail contained a one page attachment that had ground itineraries for May 3rd and May 4th, May 17th and May 24th with a handwritten note on the bottom "sep pages, trip Sen Bruno, bond paper" (Commission's Exhibit 23). Mr. Howard testified that this document came to him in the June 6th e-mail from Mr. Felton and that after he received it he took it to Mr. Dopp. Mr. Dopp asked if Exhibit 23 (one page) could be separated into three pages, one for each trip. Mr. Howard further testified that there was handwriting on Exhibit 23 that was not his and that he assumed the Exhibit referred to trips taken by Senator Bruno because he had asked Mr. Felton for itineraries for the Senator and this document had come in response to that request. Mr. Howard also stated that he called Mr. Felton on the phone to ask him if the one page document could be separated into three separate documents and also said that Darren (Mr. Dopp) had asked if headings could be put on each separate page and that Mr. Felton generally agreed to do so, and that those three separate documents were sent to Mr. Howard in the June 6, 2007 e-mail from Mr. Felton (Commission's Exhibit 35 with Commission Exhibits 1, 2, 3 referenced as "transportation assignment"), that he delivered those three separate travel itineraries to Mr. Dopp, who expressed some displeasure about the headings but stated "that's fine. Thanks" (March 12th transcript, testimony of Mr. Howard, p. 42-47).

20. Mr. Howard testified that, aside from travel records pertaining to Senator Bruno, he had never been asked by Mr. Dopp for records pertaining to any other government official, "With the exception of Senator Bruno, the only other records that I provided to him dealt with Governor Spitzer (March 12th transcript, testimony of Mr. Howard, p. 68). In addition to the records already discussed, Mr. Howard was asked for information about the cost of landing at heliports. On June 28, 2007, he sent an e-mail to Mr. Felton stating, "Now formally being asked the question about heliport landing fees" to which Felton replied "Will check" (Commission's Exhibit 69). Mr. Howard testified that his use of "formally" did not reflect any prior informal

conversation with Mr. Dopp on this subject, but referred to his "frustration with the fact that this was starting to get pretty incessant. And it was more of a sarcastic remark on my part. . ." (March 12th transcript, testimony of Mr. Howard, p. 50-51).

21. Mr. Howard also testified that Mr. Dopp had informed him that there was a FOIL request for information related to any trips taken by the Senate Majority Leader in June 2007, but that Mr. Dopp did not show him the FOIL request. Nonetheless, Mr. Howard contacted the State Police to determine if there had been any trips. In response he received an e-mail from Mr. Felton which forwarded reports from State Troopers referencing ground transportation provided to the Senator on June 27th and attached a document that appeared to be a ground itinerary for the trip to New York City taken by Senator Bruno on that date (March 12th transcript, testimony of Mr. Howard, p. 53-56; Commission's Exhibits 71- the Felton e-mail with attachment noted, Commission's Exhibit 4 - the travel itinerary contained in the attachment to Exhibit 71).

22. Anthony Williams, a Senior Investigator with State Police Troop NYC, testified that as Supervisor for the administrative duties of this troop in New York City he handled requests for ground transportation for State officials. When he received a request he would contact the person making it to obtain an itinerary for the assignment. On May 17, 2007, he received an e-mail informing him that Senator Bruno's Office was requesting ground transportation at 4:30 on May 24 from "the West 30th St. Helipad to Sheraton, Russo's and then back to Helipad by 7:15 p.m." (March 12th transcript, testimony of Mr. Williams, p. 57-59; Commission's Exhibit 17). He stated that this request was typical of the information he would receive and that on May 21, 2007 he was asked by Acting Superintendent Felton for information about ground transportation that Troop NYC had provided to Senator Bruno and that he provided such information, including a re-creation in writing of the May 24th ground itinerary he had first been given over the telephone (March 12th transcript, testimony of Mr. Williams, p. 60-64; Commission's Exhibits 15, 18, 33, 19, 20). Mr. Williams further testified that in May, 2007 he was asked by his supervisor, Major Kopy, to provide information about the ground transportation provided to Senator Bruno and that he provided information that was later reflected in Exhibit 23 (the one page list of ground itineraries for trips on May 3rd, 4th, May 17th and May 24th). Finally, Mr. Williams stated that prior to these requests, Acting Superintendent Felton had never asked him to provide ground itineraries for State officials (March 12th transcript, testimony of Mr. Williams p. 65-67; Commission's Exhibit 23).

23. Major Kopy, who has served with the State Police since 1986, testified that he is "the point person" for the Division of State Police in New York City and in that role he is familiar with the ground transportation provided by the State Police to State officials, although subordinates make the actual arrangements. He stated that these arrangements follow a request for transportation, usually made by phone or e-mail, and that there is no official, formal process for making such a request but, in the ordinary course, these requests come from the Superintendent's Office (March 12th transcript, testimony of Major Kopy, p. 68-71). He testified that when he became Troop Commander in March, 2007 there was some official documentation of requests for ground transportation but there was no specific file for them. "Within the organization we have specific filing requirements for certain documents. These documents were

not maintained in an official file, but they had, in fact, been maintained by an individual in the organization." (*Supra*, p.71-2). Major Kopy testified that because these "files had been created, files had been released pursuant to subpoenas, files had been released pursuant to FOIL requests" he felt that he had to retain them and so he did. "And I don't want to use the term 'file'.... at one point itineraries went out, reconstructions went out. After that point, there became subsequent requests for those documents. There was no file in place at that time and I did not want to just throw these things out and say they weren't being maintained. So, in essence, I kept them on my floor where they remain to this day."(*Supra*, p. 72-73.)

24. In May 2007, Major Kopy was asked by Acting Superintendent Felton for information about ground transportation for State officials. He inquired to see if, in fact, the troop had that information and he was informed that it did not. He asked if he should reconstruct the information and eventually the Acting Superintendent told him "to go ahead and reconstruct the events"(*supra*, p. 74). Exhibit 23 (the one page list of ground itineraries) was provided to him, he believes by Senior Investigator Williams, as he sought to complete the reconstruction and he faxed that page to the Acting Superintendent (*supra*, p. 75-6; Commission's Exhibits 22, 23). He testified that Exhibit 22 is the fax cover page which contained a sticky note in his handwriting stating "May 3, 4 , 24-copies of itineraries-reconstruct" (*Id*). Subsequently he, pursuant to his handwritten notes on Exhibit 22 (sep pages, trip Sen Bruno, bond paper), reconstructed the itineraries and placed them on individual pages, which he stated are now Exhibits 1, 2 and 3. "So, these are the three that I prepared, yes. I took the information that was provided to me via Senior Investigator Williams from the investigators and then I took that information and put it in there. I created the document based on the information. So, I don't want it to appear as if I created the information. That was provided to me." (March 12th transcript, testimony of Major Kopy, p. 77-80)

25. Wayne Bennett, former Superintendent of the NYS Police from September 16, 2003 until May 6, 2007, testified that the State Police was created in 1917 to correct a shortfall of police protection around the State, but specifically in the Hudson Valley. Its primary function was to provide law enforcement service in those areas of the State where it did not exist. In addition to this primary function, the State Police also provide security for State officials, primarily the Governor and Lieutenant Governor but for other officials and dignitaries when required, and ground transportation for several State officials. Further, the State Police maintain an aviation unit, which is statewide in scope and could be utilized when appropriate (March 12th transcript, testimony of Mr. Bennett, p. 83-88).

26. Mr. Bennett also testified that the aviation unit maintained all records required by the Federal Aviation Administration, but maintained no records with respect to the ground transportation provided to State officials, because there was "no need to" (*supra*, p. 88). He also stated that he had no involvement with any FOIL requests made to the State Police because there was a Records Access Officer responsible for that task. Indeed, that officer is the only person that has "authority to dispense- give out State Police files and records; no other location, no other troop headquarters, individual station or member has that authority to give it out at less than the headquarters level." (*Supra*, p. 90.) Mr. Bennett further testified that there had never been an

occasion where the Executive Chamber asked the State Police for records to respond to a FOIL request and, if such records were sought, he would ask for a copy of the FOIL request because this is out of the chain of command for FOIL requests which, generally are made to the agency that maintains the records sought. "It would have been, frankly, unprecedented in my opinion. I've never seen such a thing. All FOIL requests always went to the agencies involved, including the State Police." (*supra*, p. 91-92.)

27. Mr. Bennett reviewed Exhibits 1 through 5 (the separate ground itineraries) and testified that they did not appear to be official State Police records because such official documents would have "some indication imprinted on them that will indicate it's one of our documents." (*supra*, p.92.) "These documents don't have any indication of any numerical identification as a State Police form, and trust me, we had that on every form we had." (*Supra*, p. 93). Even if these had been official State Police documents, Mr. Bennett testified that he would not have authorized their release pursuant to FOIL because they created a serious security risk by identifying the Senator and the specific times he would be at specific places. (*Id.*) Further, it is unlikely they would be requested for a criminal investigation under FOIL, as subpoenas or other legal devices would be used under that circumstance. Mr. Bennett concluded his testimony by stating that the State Police have a long record of being non-political and that this is part of the history and tradition of the agency; it was required to be independent so as not to be used as the strong arm of whatever entity, group or party happened to be in power at any particular time. Hence, "[W]e have taken great, great measures to make sure we don't cross that line." (*supra*, p. 97).

CONCLUSION OF LAW

I. Mr. Dopp is charged with violating Public Officer's Law Section 74(3)(d), which prohibits an officer or employee of a State agency, member of the Legislature or Legislative employee from using or attempting to use his official position to secure unwarranted privileges or exemptions for himself or others. Mr. Dopp chose not to participate in the hearing that was conducted on March 11 and 12, 2009. Hence, the evidence and testimony submitted by the Commission is uncontroverted and supports a finding that Respondent violated this Section of the Public Officer's Law.

Mr. Dopp was the Communications Director to the Governor (March 11th transcript, testimony of Mr. Baum, p. 60-62). He used that position to secure unwarranted privileges or exemptions for himself and the Governor when he abused the authority given him by the position to obtain information from the State Police that was neither generally kept by them nor publically available, which he then used to discredit a political foe of Governor Spitzer, Senator Joseph Bruno.

The Findings of Fact above lay out the somewhat tedious trail of e-mail communications between Mr. Dopp, Mr. Howard - Governor Spitzer's Assistant Secretary for Homeland Security (a position similar to the one he had held in the Pataki Administration where he worked closely with Preston Felton, First Deputy Superintendent of the State Police at that time), Preston Felton - Governor Spitzer's Acting Superintendent of the State Police and James Odatto - a reporter for the *Times Union*, a prominent Albany newspaper.

In essence, the Respondent began to collect information about the ground itineraries of Senator Bruno whenever he took a trip to New York City using State aircraft (see paragraphs 4, 6, 9, 13, 14, 15, 16, above). He had previously been told by his boss, Richard Baum, that the Governor's Office was not to ask for ground itineraries when a member of the Legislature sought permission to use a State aircraft. Mr. Dopp, indeed, did not ask Senator Bruno or his staff for these itineraries. Instead, he had Mr. Howard exploit his relationship with Acting Superintendent Felton and Mr. Dopp obtained the information directly from the State Troopers who were providing the ground transportation to Senator Bruno (see paragraphs 14, 15, 16, above).

The immediate past Superintendent of the State Police, Wayne Bennett, testified about the role of the State Police and stressed its absolute obligation to remain politically neutral so as never to appear to be the strong arm of whatever party or person was in power at any particular time. He also testified that the documents (Commission's Exhibits 1-5) that were eventually created, at Mr. Dopp's behest, by members of the State Police, were not and could never have been official documents of the force because they were not identified by headings or file numbers as were all official documents of the State Police (see paragraphs 25, 27, above). In addition, Major Kopy, the Troop Commander in charge of Troop NYC, the entity charged with providing ground transportation to State officials in New York City, testified that these travel itinerary documents were not maintained in an official State Police file (March 12th transcript, p. 71), and were, in fact, not even files but were written reconstructions that he maintained in a pile on his office floor because he did not want to throw them out (*supra*, p. 73; see also paragraphs 23, 24, above).

Indeed, Commission's Exhibits one through five were fabrications created expressly at Mr. Dopp's direction by members of the State Police who knew about ground transportation schedules, because it was part of their job to provide such transportation, but who did not, as part of their job, keep or provide records about such ground transportation. Major Kopy, who actually typed the individual documents that became Exhibits 1, 2 and 3 stated that he "reconstructed" the information he had-which had been one sheet and included ground itineraries for May 3, 4, 17 and 24 (Exhibit 23) - into three individual documents and printed it on bond paper, with headings because that was what Mr. Dopp requested from Mr. Howard, who forwarded the request to Acting Superintendent Felton who asked Major Kopy for the document (March 12th transcript, p.77; see also paragraphs 19, 24, above). Nonetheless, the Major wanted to make it clear that he did not fabricate or create the information contained in those documents: "I created the document based on the information. So I don't want it to appear that I created the information. This was as it was provided to me."(*supra*, p. 79-80). It was, in fact, provided by a subordinate, Anthony Williams, a Senior Investigator in Troop NYC, responsible for

administrative activities - including providing ground transportation - who had as one of his general duties the responsibility for coordinating ground transportation for State officials in NYC (March 12th transcript, p. 59-64). Mr. Williams, upon a request from Acting Superintendent Felton for information about ground transportation provided to Senator Bruno by Troop NYC on May 24th also, like Major Kopy, had to re-created a written itinerary, in this case from information he had received by telephone from Senator Bruno's office (see paragraph 22 above).

These repeated and convoluted requests for copies and re-creations of State Police documents that were not, in fact, kept in the ordinary course of State Police business did a great disservice to the State Police as a whole and to the individual members involved. By virtue of the authority he had as a member of Governor Spitzer's staff, Respondent Dopp misused and tainted the State Police by his actions, thereby tarnishing their public image and undermining, at the very least, their appearance of impartial, non-political behavior. He did so, to enhance his own position with the Governor and to bolster the Governor's position with respect to his political foe in the Senate, thereby securing unwarranted privileges for himself and for his boss and so violating Public Officer's Law Section 74(3)(d).

II. Mr. Dopp also was charged with a violation of Section 74(3)(h) which requires that an officer or employee of a State agency, member of the Legislature or Legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust. As stated above, Mr. Dopp in essence defaulted in this matter when he chose not to attend the hearing to present evidence which may have shed a light on his actions different from that shed by the Commission. Hence, the evidence and testimony submitted by the Commission supports a finding that Respondent violated this section of the Public officer's Law.

In his role as a high ranking member of Governor Spitzer's executive team, it was to be expected that Mr. Dopp's conduct would be above reproach. Instead, he used his position in the Governor's Office to manipulate other members of the administration to obtain information that he then used in an attempt to discredit a political foe of that administration. Mr. Dopp's motivation is immaterial here; it is his conduct that serves to raise suspicion among the public that he has violated his trust.

Mr. Dopp used Mr. Howard to obtain information from Acting Superintendent Preston Felton of the State Police - information that the State Police did not maintain in the ordinary course of business - and then had that information reformatted from one page of itinerary notes to three separate pages that looked, at least, more like an official document. This behavior, alone, raises a question about integrity and gives rise to a finding that Mr. Dopp's conduct violated the public trust that was placed in him, a trust that surely does not include the manufacturing of documents that otherwise would not exist - especially when those documents were designed for the sole purpose of undermining the authority of a political foe.

Indeed, this behavior does not stand alone. Mr. Dopp also attempted to use the power of his position as Communications Director to get the press to assist him in achieving his political purpose. Commission's Exhibit 67 is a document entitled "For Background Only" which contains detailed information about Senator Bruno's travel to New York City on May 17, 2007, alleges that it is possible, if not likely, that no official State business was conducted by the Senator on that day and compares that to the use of State aircraft by the Governor who, according to the document, only uses such aircraft for meetings and events clearly connected to official duties. This document indicates that it was "last saved by: Darren Dopp" and, indeed, Mr. Dopp stated in prior sworn testimony during the Commission's investigation that "I wrote it." (Mr. Dopp's testimony, p. 125, lines 13-18 as explained by Commission Counsel Ms. Holohan in the March 11th transcript, p. 49). Information from this document appears to have made its way into the July 1, 2007 (Commission's Exhibit 85) article in the *Times Union*, written by James Odato, which, in fact, closely tracks the material in Exhibit 67. Also in the article were copies of those three separate travel itineraries for Senator Bruno (Commission's Exhibits 1, 2, 3) that Mr. Dopp had constructed for him by the State Police.

The e-mail exchanges concerning the travel itineraries between Mr. Dopp, Mr. Howard and Acting Superintendent Felton occurred late in May and early in June; the separate itineraries were sent to Mr. Dopp on June 6, 2007 (see paragraphs 14, 15, 16, 19, 20, 21, 22, 24 above). Mr. Odato's original "FOIL request" (Exhibit 66) did not seek travel itineraries for Senator Bruno, was dated June 27, 2007 (a mere four days prior to the publication of the newspaper article that made use of the material that was requested), was addressed directly to Mr. Dopp and was never forwarded to the Executive Chamber's Records Access Officer for response. Indeed, the official FOIL request that finally find its way to Ms. Treisman was dated July 10, 2007 and was not responded to until August 14, 2007 - some time after the article, which referenced forms obtained pursuant to a FOIL request - appeared in the newspaper (Commission's Exhibit 66; see also paragraphs 9, 10 above). Hence, it is reasonable to conclude that Mr. Odato was made privy to this information, in advance of his formal requests, by Mr. Dopp.

This conclusion is bolstered by the fact that on June 26, 2007 Mr. Dopp responded to an e-mail he received from Tami Stewart, the Press Office Manager in the Governor's Office, in which she states that Mr. Odato "wants some prep from you" by forwarding it on to Christine Anderson with the message "Can you give him a buzz? Need to be nice to him. Going to ask a big favor of him soon." (Commission's Exhibit 78.) It can hardly be coincidence that the very next day, Mr. Odato sent the purported FOIL request directly to Mr. Dopp (Exhibit 66), and then a mere four days later published a lengthy article (Exhibit 85) using documents that had been created by Mr. Dopp (Exhibit 67) and the State Police at Mr. Dopp's direction (Exhibits 1, 2, 3). Likewise, it can hardly be argued that such conduct- the manufacture and dissemination to a favored member of the press of documents designed to discredit a political foe - by Mr. Dopp was within the realm of his responsibilities as Communications Director. Hence, they support a finding that Mr. Dopp pursued a course of conduct likely to raise suspicion that he was acting in violation of his public trust and so violated POL Section 74(3)(h).

RECOMMENDED PENALTY

Subdivision four of Public Officers Law Section 74 provides that any such officer who knowingly and intentionally violates any provision of the Section may be fined, suspended or removed from office. In addition, a violation of paragraph (d) gives rise to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Mr. Dopp's violation of Public Officers Law Section 74(3)(d) did not result in a benefit that has a measurable dollar amount. In addition, it is unclear if Mr. Dopp engaged in using his official position to secure unwarranted privileges for himself or if he did so only on behalf of "others." Thus, while such misuse of an official position is reprehensible, a penalty of five thousand dollars is recommended. Subdivision four of Public Officers Law Section 74 provides no specific penalty for a violation of paragraph (3)(h); hence no additional penalty is recommended. Finally, it has been held that the knowingly and intentionally standard in the Public Officer's Law requires only an awareness or understanding of the actions a Respondent is taking and so no further proof of a particular *mens rea* is required as it is clear from the testimony and Exhibits in the record that Mr. Dopp was fully aware of his very specific actions and conduct. [*Matter of Gormley v. New York State Ethics Commission*, 11 N.Y.3d 423, 2008, with respect to the knowingly and intentionally standard in POL Section 73(18).]

**STATE OF NEW YORK STATE
COMMISSION ON PUBLIC INTEGRITY**

**540 Broadway
Albany, New York 12207**

**IN THE MATTER OF AN INVESTIGATION INTO
THE ALLEGED MISUSE OF RESOURCES OF THE
DIVISION OF STATE POLICE**

**DARREN DOPP,
COMMUNICATIONS DIRECTOR TO
GOVERNOR ELIOT SPITZER,**

**COMMISSION ON
PUBLIC INTEGRITY
EXHIBIT LIST**

Respondent.

The New York State Commission on Public Integrity may introduce the following documents in the Commission's administrative proceeding against Darren Dopp:

1¹	Transportation Assignment for Senator Bruno for May 3-4, 2007
2	Transportation Assignment for Senator Bruno for May 17, 2007
3	Transportation Assignment for Senator Bruno for May 24, 2007
4	Ground Transportation dated June 27, 2007
5	Trip to NYC May 17-18, 2007
15	Email chain between Preston Felton and Anthony Williams dated May 21, 2007
16	Email chain between Darren Dopp and William Howard dated May 17, 2007
17	Email Jeanette Ricciardone to Anthony Williams dated May 21, 2007
18	Email Preston Felton to Anthony Williams dated May 22, 2007
19	Email chain between Preston Felton and Anthony Williams dated May 23, 2007

¹ Unless otherwise noted, the number listed references the Commission exhibit attached to the Notice of Reasonable Cause ("NORC") issued on July 24, 2007.

20	Email chain between Anthony Williams and Preston Felton dated May 23, 2007
22	Fax Transmission Sheet Michael Kopy to Superintendent Preston Felton - undated
23	Transportation Assignments for May 3-4, 17 & 24 - undated
31	Email Preston Felton to William Howard dated May 21, 2007
32	Email chain between Preston Felton and William Howard dated May 21, 2007
33	Email chain between Preston Felton to William Howard dated May 22, 2007 through May 23, 2007
34	Email from William Howard to Darren Dopp dated May 23, 2007, forwarding email from Preston Felton dated May 23, 2007, forwarding email from Anthony Williams dated May 23, 2007
35	Email from Preston Felton to Howard w/attachments (itineraries) dated June 6, 2007 forwarding Email Michael Kopy to Preston Felton w/attachments (itineraries) dated June 6, 2007
41	Email chain between Richard Baum and Darren Dopp dated May 17, 2007 Subject: Re: statement
45	Email Darren Dopp to Richard Baum dated May 23, 2007
47	Email chain between Darren Dopp to Richard Baum dated June 3, 2007
48	Email chain between William Howard and Richard Baum dated June 3, 2007
58	Email William Howard to Darren Dopp dated May 17, 2007
59	Email William Howard to Darren Dopp dated May 17, 2007
62	Email from William Howard to Darren Dopp dated May 21, 2007 forwarding Email from Preston Felton to William Howard dated May 21, 2007
66	Email James Odatto to Darren Dopp dated June 27, 2007
67	"FOR BACKGROUND ONLY" Memorandum dated June 27, 2007
69	Email chain William Howard to Preston Felton dated June 28, 2007

71	Email from William Howard to Darren Dopp dated July 2, 2007
76	Email chain between Richard Baum and Darren Dopp dated May 17, 2007
78	Email chain between Christine Anderson and Darren Dopp dated May 26, 2007 forwarding Email from Tammy Stewart to Darren Dopp dated May 26, 2007
85	<i>Times Union</i> Article with Blog Attachments dated July 1, 2007
88	Email from James Odatto to Darren Dopp dated July 10, 2007
91	Letter Mariya Treisman to James Odatto dated August 14, 2007
92	Foil Response of June 2007 records REDACTED
125	Email—Steve Krantz to Darren Dopp, cc: Robin Forshaw, David Nocenti dated June 27, 2007 forwarding Email from David Nocenti to Darren Dopp, cc: Robin Forshaw, Steve Krantz dated June 27, 2007 forwarding Email Darren Dopp to David Nocenti dated June 27, 2007
131	Email from David Nocenti to Kristine Hamann dated July 11, 2007
148	Email from Richard Baum to David Nocenti dated July 1, 2007 forwarding Email David Nocenti to Darren Dopp & Richard Baum dated July 1, 2007 forwarding Email Darren Dopp to David Nocenti dated July 1, 2007
181 ²	Disposition Agreement of Richard Baum, former Secretary to the Governor
182	Affidavit of Richard Baum, former Secretary to the Governor executed in connection with the disposition agreement marked as Exhibit 184
183	Disposition Agreement of William Howard, former Assistant Secretary for Homeland Security
185	Notice of Hearing dated January 26, 2009

² The Commission's July 24, 2008 NORC included 180 exhibits. The remaining exhibits listed were not included with the NORC. To avoid confusion with the NORC exhibits, numbering begins at 181.