

WAYS AND MEANS
COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE
Minutes

A regular meeting of the Ways and Means Committee of the Suffolk County Legislature was held in the Maxine S. Postal Legislative Auditorium of the Evans K. Griffing Building, 300 Center Drive, Riverhead, New York, on Wednesday, October 14, 2016.

MEMBERS PRESENT:

Legislator Bridget Fleming - Chairwoman
Legislator William Spencer - Vice-Chairman
Legislator Rob Calarco
Legislator Monica Martinez
Legislator Rob Trotta
Legislator Tom Cilmi - Excused
Legislator Kate Browning - Excused

ALSO IN ATTENDANCE:

Legislator Kara Hahn
Legislator Bill Lindsay
Amy Ellis - Chief Deputy Clerk of the Legislature
Lora Gellerstein - Chief of Staff
George Nolan - Counsel to the Legislature
Sarah Simpson- Deputy Counsel to the Legislature
Ann Marie Pastore - Legislative Aide
Michael Pitcher - Aide to P.O. Gregory
Jenn Hann - Aide to Legislator Lindsay
Liz Sutton - Aide to Legislator Fleming
John Gross - Ingerman Smith, L.L.P.
Lisa Calla - Associate to John Gross
Linda Spahr - Chair, Suffolk County Board of Ethics
Samantha Segal - Executive Director, Suffolk County Board of Ethics
Richard Halverson - Vice Chair, Suffolk County Board of Ethics
Rick Brand - Newsday
All other interested parties

MINUTES TAKEN BY:

Gabrielle Severs - Court Stenographer
Lucia Braaten - Court Stenographer
Alison Mahoney - Court Stenographer

Minutes Transcribed By:

Gabrielle Severs - Court Stenographer
Lucia Braaten - Court Stenographer

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Alison Mahoney - Court Stenographer
Kim Castiglione - Legislative Secretary

(*The meeting was called to order at 10:36 a.m.*)

*(The following was taken by Gabrielle Severs - Court Stenographer,
and transcribed by Kim Castiglione - Legislative Secretary)*

CHAIRPERSON FLEMING:

Thank you all and welcome once again to a Special Meeting of the Way and Means Committee today, October the 12th. And I will just read -- open the meeting by reading the notice was noticed as follows: "Please take notice that a Special Meeting of the Ways and Means Committee shall be held on Friday, October the 14th, at 10:30 a.m. at the Maxine S. Postal Auditorium of the Evans K. Griffing Building, 300 Center Drive, Riverhead, New York, 11901. The purpose of the meeting shall be to discuss with representatives of Suffolk County Board of Ethics policies and procedures for handling Financial Disclosure Statements and specifically the denial of a FOIL request regarding financial disclosure information."

We'll begin with the Pledge of Allegiance led by Legislator Spencer.

(*Salutation*)

Thank you. So this is a special meeting. I have no correspondence, so we'll move right to our presentation and discussion which is the only substantive matter on the agenda. The presentation from the Suffolk County Board of Ethics, again regarding policies and procedures for handling Financial Disclosure Statements, and specifically the denial of a FOIL request.

Just to give you a little background. It came to our attention at the Legislature that there were some very serious concerns with regards to the denial of disclosure -- actually a FOIL request by a newspaper, Newsday, for the Financial Disclosure Statement of a very senior member of the District Attorney's Office. I sent a letter to Samantha Segal, who is with us today, who is the FOIL Officer for the Ethics Board, directing that Ms. Segal appear so that we, the committee, can have a discussion as to the policies and procedures underlying the disclosure of FOIL requests and to really have a clean and clear understanding of the reasons for that denial as they raised some concerns in the public and amongst some of us on the Legislature. So I'm very pleased that, Samantha, you were able to join us.

I did send a letter. In the letter I did invite Ms. Segal to bring with her any persons or materials that she felt would be helpful to the discussion. I received a letter from Linda Spahr, the Chair of the Ethics Board, requesting that she accompany Ms. Segal, and certainly we are here to have a full and open discussion. So I'm pleased to see that you are here, and another member of the Board, so I'm just going to leave it at that and allow you, Linda, to kick it off. If each of you could just introduce yourselves, let us know what your role is, and then I understand that you have a presentation. So Ms. Spahr.

MS. SPAHR:

Thank you. My name is a Linda Spahr and I am the Chair of the Suffolk County Board of Ethics.

MR. GROSS:

I'm John Gross. I'm Counsel to the Board.

MS. SEGAL:

My name is Samantha Segal. I'm the Executive Director to the Suffolk County Board of Ethics. I serve in the capacity of FOIL Appeals Officer and I am the Director of Training as well.

MR. HALVERSON:

Richard Halverson, I am the Vice Chairman of the Board of Ethics.

CHAIRPERSON FLEMING:

I think we heard that was Mr. Halverson, Richard Halverson, who is a Vice Chair of the Board of Ethics. Thank you all for coming. Before you start, I'd just like to note that we are certainly appreciative, not only of your time this morning, but of all your efforts in this really very important role in County Government. So thank you for coming and thank you for everything you do. And I appreciate your being willing and able to come and describe to us your actions with regard to our concerns. So, Linda, if you want to just kick it off.

MS. SPAHR:

Thank you. Good morning, Madam Chair and Mr. Vice Chair, and I was going to say Mr. Presiding Officer, who I think I saw walk in the room before, and all of the members of the committee. It's my pleasure to be here this morning. I thank you for the opportunity to give you some background to help you, and especially to help the public, better understand how the Suffolk County Board of Ethics functions and how decisions are rendered in all of our areas of responsibilities, including review of Financial Disclosure Statements and application of FOIL laws.

As you know, some of you passed the laws, the Board of Ethics is a fully independent County agency created by the Suffolk County Legislature under the authority of the New York State General Municipal Law. The Board, our Board, is a successor to the former Ethics Commission, and a series of other committees and boards that handled ethics and financial disclosure matters dating back some 30 years in Suffolk County.

The Suffolk County laws that created this current Board of Ethics, and adopted the current Code of Ethics, took effect in March of 2012 and they were distinctly different than all of the prior laws in Suffolk County, and there were really three different ways.

First, the Board was created as an independent agency and it is treated as a separate agency for budgetary purposes. It has sole power and responsibility to appoint an Executive Director, a secretary, independent counsel and other staff necessary to exercise its power and fulfill its obligations. It is not under the supervision of the County Attorney. Its offices cannot even be sited in a building that's occupied by the County Executive or the County Legislature.

And in a second way the Board composition and requirements for service are very specific. There are five members of the Board, no more than three of whom may belong to the same political party. Two are appointed by the County Executive, one by the Presiding Officer, one by the Majority Leader, and one by the Minority Leader. All the appointments must be approved by the Legislature and we all serve for a term of four years. No person serving on the Board may hold any public office, be a public employee in any jurisdiction, have business dealings with the County or any elected official, hold any political party office, appear as a lobbyist before the County, or even make a contribution to any County elected official or candidate for County office.

And the third way that the laws were different is that under the County Charter the Board's authority and responsibility is specifically delineated, and that's in four separate areas. The first area is the area of training; the second area is the rendering of advisory opinions on ethics and conflicts of interest issues; the third area is making Financial Disclosure Statements available to required filers and reviewing of the statements; and then the fourth area is conducting investigations and hearings to determine if ethics violations have occurred and then imposition of penalties as authorized by law.

The way the Board was formulated and the Administrative laws that regulate our responsibility and

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duties are complicated, and in some ways they make our job very difficult to perform and our actions difficult to understand -- from the outside. That is why I wanted to appear and talk to you today. But first, to the point of why we're here, which is Procedural Motion 21-2016.

On October 5, 2016, the Legislature passed a Procedural Motion directing the Board to provide records to the Way and Means Committee by 10:00 a.m. today. Those records were quote "the Financial Disclosure Statements of John Scott Prudenti, filed for the years 2000 to the present." By letter of the same date you, the Chair of the Ways and Means Committee, directed the Board's Executive Director, Samantha Segal, to appear before a special meeting of the committee today. You indicated that the purpose of today's special meeting shall be to exam the decision articulated by Ms. Segal in a particular FOIL appeal letter dated July 11, 2016, that was related to Mr. Prudenti's Financial Disclosure Statements. You invited Ms. Segal to be accompanied by any persons or provide any materials she believed would be helpful to this committee's inquiry into that decision.

I'd like to point out, because it's relevant to the overall discussion here, that Ms. Segal's appearance was not required by any vote of the Legislature, and no subpoenas were issued for any person's attendance here today. I would like to also point out that Ms. Segal's appearance was sought in her capacity as the Freedom of Information Appeals Officer of the Suffolk County Board of Ethics, not in her capacity as Executive Director of the Board. If we had more staff, frankly, she would not be the FOIL Appeals Officer, and that's something that we have expressed concerns about before.

Upon learning about the procedural motion, we consulted with Counsel, and Ms. Segal consulted with the Suffolk County Clerk to determine the appropriate procedures for conveyance of original, confidential documents from one agency of County Government to another. She arranged for the appropriate chain of custody documents, and I notified you by letter dated October 11, 2016, that the Board would have the documents delivered to you today in compliance with the Procedural Motion. I also asked for the opportunity to make this presentation to you to help you and the public better understand how our Board functions. And by letter of October 12th, you kindly granted my request and I am very grateful for that because we believe that talking about what we do is very, very important for the purposes of the public trust and for your understanding of how we make our decisions.

Later that day, we learned that Mr. Prudenti was seeking a Temporary Restraining Order to block transfer of the records from our office to your committee pending a ruling on an Article 78 application to nullify Procedural Motion 21-2016. Yesterday we were served with an Order to Show Cause issued by Supreme Court Justice Santorelli, which blocked us from releasing or otherwise making public any and all Financial Disclosure Statements of John Scott Prudenti.

In accordance with that order, all of the original Financial Disclosure Statements filed by Mr. Prudenti and in the possession of the Board of Ethics were delivered to the issuing Justice this morning. I am not violating the Court Order by telling you what our attorney told the Judge and told Mr. Nolan yesterday in court. The Board does not have possession of any statements from Mr. Prudenti filed prior to 2006 or subsequent to 2014. So I'm saying we don't have possession. We did not at the time have possession, and this is why.

In accordance with Article 57-A of the New York Arts and Cultural Affairs Law, the Suffolk County Legislature, by Resolution 424-1990, and that was adopted in May of 1990, adopted the records retention and disposition schedule CO-2, for use by all Suffolk County offices in disposing of County Government records listed therein. Under the law, Financial Disclosure Statements are required to be retained for seven years. Accordingly, the FDS forms predating 2006 are no longer in the possession of the Board and cannot be produced. So they would not have been produced to you prior to 2006 today and those dating prior to 2006 were not produced to the court today.

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In addition, the Board is in possession of, or was in possession of Financial Disclosure Statements for Mr. Prudenti only through 2014.

Section 77-10 of the Suffolk County Code lists the persons that are required to file annual County Financial Disclosure Statements. Now, we previously reported to you and filed in our annual reports for 2014 and 2015 that department heads are the persons under County law who are responsible for designating their employers -- employees, rather, as quote unquote required filers. So Section 77-10, Subdivision F of the County Code mandates that each County employee, other than an employee of the County Exec's Office or County Legislature, who holds a policymaking position must file a Financial Disclosure Statement. However, under our County law it is left to the discretion of the agency head to designate the employee's position as a policymaking position. District Attorney Bureau Chiefs, including Mr. Prudenti, were not listed on the required filer list for 2015 and 2016 that were provided to the Board by the District Attorney's Office. Therefore, the Suffolk County Board of Ethics is only in possession of, or I should say was only as of yesterday, in possession of ADA Prudenti's forms until and including 2014.

So I wanted to put that information out before you so it isn't something you'll be surprised to hear about later. That information would have been provided to you at the time we provided the documents to you today.

I'd like to talk about the Board of Ethics, the membership of the Board and the staffing and how we do our job. First of all, for most of 2015, one of the five Board member positions was vacant; for half the year two of our positions were vacant. Now I'm proud that each of the remaining members made service on the Board's -- the Suffolk County Board of Ethics a priority over other obligations, ensuring that we had a quorum for all of our scheduled meetings, but it was hard to function. We ourselves made liberal use of FOIL to obtain documents relevant to reviews and investigations because we did not have the option of issuing subpoenas without four sitting members to vote as a super majority. As of the end of March of 2016, all of the vacancies have been filled.

I am extremely honored to be on the Board of Ethics and to serve as its Chair. Our members bring extraordinary depth and breadth of professional experience and both public and private sector service to the job. Among us we have experience in the areas of public finance; university teaching; local governance; elected office; Federal, State and local training; attorney grievance and discipline; military service; private, civil and criminal law practice; fraud and abuse investigations. We all take very seriously our oaths of office and we have great respect for each other and the public that we serve.

While the law creating the Board was effective in March of 2012, it took several months before we had a full membership. I was the last of the original members appointed to the Board, and that was not until the middle of the summer of 2012. While it was well and good for the Legislature to create a Board as a separate agency, there were no transition provisions in the original laws. Volunteer members of the Board were doing things like logging in Financial Disclosure Statement forms while we had no formal office, we had no staff, no counsel, no Executive Director, no access to the records or computers or materials from our predecessor Board or Commission. Many people refused to file their Financial Disclosure Forms with us because we did not have an independent office space in compliance with the new law. We had to seek amendments to the enabling legislation to give us access to former Ethics Commission records, including some of the ones you hoped to receive today, and to authorize us to extend deadlines for various activities required of us, which deadlines were already expiring.

As we struggled with the very difficult quote "simple things" like finding an office and getting a date stamp, we enlisted the help of the New York City Conflict of Interest Board for training on how to create an independent, respected office. We learned right away that we needed a professional recordkeeping system to satisfy the rigorous requirements of our own local law, and also to satisfy what I'll call the clerking requirements that were imposed on the Board regarding Financial

Disclosure Statements.

It would take too much of your time to describe how difficult it was to write letters, post notices, solicit resumes, schedule and conduct interviews to even find a confidential secretary -- since we didn't have a secretary and we weren't allowed to utilize staff from any other County agency to help us do this, but we did it and we were able to recruit an exceptional candidate from the Suffolk County Clerk's Office. Darlene Kurass brought with her strong government record skills, excellent clarity of thought, independent judgment and the willingness to leave a competitive class Civil Service position to take on the challenge of working for a brand new agency. She maintains meticulous records of the Board's activities, all of which are subject to review and most of which are on the Board's website. She also produces most of our written training materials, including the very popular poster training series, which most of you have probably seen, and she serves as the FOIL Officer for the Board.

Once our secretary was on the Board and we had received the New York City Conflict of Interest Board training, we were able to identify the qualities we would seek in an Executive Director. We were able to work with the Civil Service Department to create a classified position and we were able to begin a nationwide search. We knew that as an independent agency we would not have the support of other County agencies to give us legal advice or perform administrative functions. We felt strongly that we needed an experienced attorney with a strong background in both ethics, in administration of government and civil administrative law, and we really needed a self-starter. We determined early on that we would impose the same restrictions on political activities upon our staff that was statutorily imposed upon us. We also knew that we needed an Executive Director who would have strong research skills, strong training skills, and the ability to communicate clearly and calmly with a wide variety of people, that would understand the interplay between transparency and confidentiality, and always treat people with respect.

Samantha Segal was one of about a dozen people we interviewed for the job. We learned as much from her about what her job would entail as she learned from us during the interviews. At the time we appointed her, Ms. Segal had served as an Administrative Law Judge for New York State and New York City for a number of years, following her time in private practice. She had held more than 5000 administrative judicial hearings, reviewing activities and violations and making judgments about the conduct of public service work and contracts in 17 different government agencies. Of all those thousands of decisions she issued, only one was challenged in an Article 78 proceeding. That decision was ultimately upheld.

Ms. Segal had worked closely with the New York City Conflict of Interests Board and seriously studied and evaluated our new laws here in Suffolk County, both prior to and in between her interviews. Some of the things she pointed out to us during her interviews are relevant to your review today.

There is a clear-cut line between many of the things that our staff does and the things that only the Board has legal authority to do. In the case of Freedom of Information Law, all requests for government documents must be handled in the ordinary course of government business by government employees. There must be a FOIL Officer and there must be a FOIL Appeals Officer, and they must follow strict guidelines. When an appeal is denied, the Appeals Officer must file a copy of the appeal and the decision with the New York State Committee on Open Government. All FOILs and FOIL appeals are done in consultation with our Counsel.

Initially, the Board appointed Ms. Segal as the FOIL Officer. However, after consultation with the County Attorney, a determination was made that the County Attorney could not serve as the FOIL Appeals Officer, as they usually do for other County agencies, because of the restrictions in our Code. After reviewing the Civil Service job descriptions for our secretary and our Executive Director

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positions, a determination was made that the two legally required functions could be fulfilled by Ms. Kurrass and Ms. Segal. This was convenient since the Board has exactly two employees. Our requests for additional staff can be found in the Board's last four annual reports to this Legislature and the County Executive.

The appointment of the FOIL Officer and FOIL Appeals Officer were made by appropriate resolution of the Board at a regularly scheduled meeting, and those appointments, along with the FOIL procedures adopted by the Board, are included in the Board Member Reference Booklet which I'm presenting to you today that has all of our procedures in it.

FOIL compliance is more complex for our Board than for other agencies. This gets directly to what you're looking at today. There's a specific requirement that requests for Financial Disclosure Statement forms -- requests from our agency be answered in the order that they are received, so there's no such thing as casual compliance with FOIL. Meticulous records are kept. There are documents that require particular notifications and redactions under our local laws, and most potentially chilling, there is a criminal penalty for release of materials that are obtained in connection with investigations and advisory opinions. Counsel is going to talk a little bit about this before Ms. Segal testifies today, but this is an incredibly important provision of law that I think it's fair to say, although the Board itself doesn't make the FOIL determinations, it affects the manner in which we administer the FOIL laws. Usually unconnected to FOIL because these criminal penalties, which obviously were important to the Legislature in terms of keeping confidentiality of our work, we think about those penalties at almost every meeting. Not because we're concerned about getting in trouble for releasing material, but there are many times when we're trying to determine how we can communicate problems that we uncover to government officials who may be able to fix them.

And this provision of the two-thirds vote of the Legislature, we talk about you and how we can use that and may be able to request a two-thirds vote of the Legislature on future occasions so that we can make available to the public and to other government agencies things that we think are important for you to you know and that we're prohibited from disclosing. But that's kind of an aside.

FOIL requests are handled administratively by our staff in accordance with our policies. The Board never rules on a FOIL request or a FOIL appeal. By Board policy, every requester is treated equally, and the rules that apply to public review of documents are applied respectfully, dispassionately and with an honest effort to balance individual rights against public access needs.

As we were discussing this issue yesterday, Ms. Segal returned to a distinction between our laws and the laws of other jurisdictions, which she had always thought was problematic and we've always tried to procedurally address. We talked about this when we developed our FOIL procedures, we talked about this actually during our first interview with her, and I'll try to describe what this issue is.

Our local law requires the Board to serve two separate functions when it comes to Financial Disclosure Statements. The first one is what I'll refer to as a clerking function. We send out forms, we collect them, we maintain them and we respond to public access requests. The second function is the review function. I'm going to talk about a review function and how we do that in a moment, but I would like to point out to you, as you try to figure out what a denial letter might mean, that this would play out very differently if the clerking function and the review functions were performed by different agencies. It's this dual function under the law that can lead to some confusion in understanding what our agency means when it makes determinations and speaks.

Now in thinking about this, please remember that Financial Disclosure Statements are not Board of Ethics forms. They are created by the Legislature word for word. They are simply filed with the

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Board. And as we have repeatedly pointed out in our annual reports, it's the department heads who decide which employees should file them. The Board believes that the Legislature should decide which employees should file them and we have made this clear to the Legislature and the County Executive in our previous County reports.

In jurisdictions where the statements are filed with a different clerking agency than the actual Conflicts Board, the Conflicts Board physically removes the statements from the clerking agency when it's conducting a routine review or investigation. So if a FOIL request is filed with that clerking agency for a particular statement, the clerking agency would respond that the record is unavailable because it's under review if it's being reviewed by the Conflicts Agency, and they would advise the requester to check back. I'm looking at your face to make sure I said that clearly. Okay. All right.

The Board's required to review all Financial Disclosure Statements. We do this in a methodical fashion that I'll discuss, but I ask you to consider, as you do your job today, that the same person who together with Counsel performs audit review functions for the Board with written authority and directives, also serves as the FOIL Appeals Officer. No matter how meticulously the routine work of the Board is accomplished, and how carefully it is documented, it can be inadvertently confusing looking from the outside in.

With respect to our Counsel and our training consultants, one of the requirements in our local law is that the Board be represented by independent counsel. After we appointed our Executive Director and instituted written procedures, we started our search for Legal Counsel and a Training Consultant, two separate proposed contracts. We engaged in a formal procurement process, seeking a firm that had experience in municipal law and ethics. We were also looking for a firm that had no political involvement and did not have any business dealings with the County, basically the same restrictions placed on the Board by law and upon the staff by our Board policy.

We requested proposals and legal opinions and samples and training proposals from all respondents and conducted numerous interviews to find the right fit for the Board. We found it in Ingerman Smith and the Senior Managing Partner, John Gross, who is Counsel to the Board. Mr. Gross has extensive experience in municipal law, in public sector labor law and training in many fields. He's the former president of the Suffolk County Bar Association. He has served as Chair of the New York State Bar Association Alternative Dispute Resolution Committee. He was a founding member of the New York State Judicial Institute on Professionalism in the Law. Mr. Gross is President of the New York State Bar Association -- the Foundation, the philanthropic arm of the State Bar Association, and he is also Counsel to the Suffolk County Bar Association.

Mr. Gross or other members of his firm participate in all of our Board training programs, along with our Executive Director and members of the Board. All of the FOIL decisions, all of the FOIL appeals, are reviewed by Mr. Gross or other members of his firm specifically assigned to our contract. The letter under review by the committee today was reviewed by Mr. Gross before its issuance.

I'd like to talk a little bit about some of the accomplishments of the Board in terms of fulfilling our responsibilities set forth in the County Charter.

CHAIRWOMAN FLEMING:

Ms. Spahr.

MS. SPAHR:

Yes.

CHAIRWOMAN FLEMING:

I do appreciate -- we have a very limited agenda here. We really wanted to -- and don't get me wrong. I've heard that you have a difficult job and that you've had a difficult job, all of you, and we're very appreciative that you're able to work under circumstances with limited staffing and what have you. And I understand that you all bring a lot to the table in your service, but we really want to move this along in terms of the specific questions that we have with regard to the denial of the disclosure, so if you wouldn't mind moving forward to that and keep your comments to that. That would be helpful to us.

MS. SPAHR:

I will happily do that. I would ask that you accept my full written statement for the record --

CHAIRPERSON FLEMING:

Absolutely.

MS. SPAHR:

-- and I will move along to the part that directly addresses Financial Disclosure Statements.

CHAIRPERSON FLEMING:

Thank you.

MS. SPAHR:

From our inception, we've received, reviewed, audited and required amendments for and brought enforcement actions regarding required Financial Disclosure Statements. There is an essential question about why Financial Disclosure Forms are required to be filed in the first place, and there's a very rich and complete area of legal and public policy research on the subject. In reading about this whole disclosure question, there seems to be a presumption that the purpose of having employees file is so that the public can see them. I'm not so sure that's that case, and I don't believe that that is the underlying purpose of requiring Financial Disclosure Statements to be filed by so many employees. It is more layered than that.

LEG. TROTТА:

If I may. Can I ask you why you feel that way? Is that your personal opinion?

CHAIRPERSON FLEMING:

I'm sorry. Legislator Trotta, we will have an opportunity to question the panel. I've given them --

LEG. TROTТА:

I just find it --

CHAIRPERSON FLEMING:

I'm going to ask you, Rob, to --

LEG. TROTТА:

-- ridiculous that she continues reading.

CHAIRPERSON FLEMING:

I appreciate that this is a carefully prepared statement, and I'm going to ask the audience to keep your applause to yourself. We want to proceed with this, get through the question at hand, so we're not going to have back and forth with the Legislators. I'm going to ask you to move more quickly through your prepared comments and to specifically -- not that quickness is necessarily important, but we really do want to keep things to this very limited agenda. So if you could just move forward with that. And, Rob, we're going to have plenty of opportunity to question the

speakers when they're done. We'll balance this, the concerns of both the panel and you. Thank you.

MS. SPAHR:

Thank you. And these are -- this specifically addresses the question of how Financial Disclosure Statements are handled and how they're disclosed.

CHAIRPERSON FLEMING:

I guess the big question that we have are -- is there specific policies and procedures regarding what you do, who does them and what specifically happened in this instance. So if you could address those questions I think we'll all be able to ask questions of you if in your statement you haven't given us what we need. But I think you've heard and I think we all share a concern that we don't need as much background information as you feel you need to provide. So if you could keep that brief and move to the question at hand that would be appreciated.

MS. SPAHR:

Certainly.

CHAIRPERSON FLEMING:

Thank you.

MS. SPAHR:

The reason -- the job of the Board, as I indicated, there's two different parts to the jobs Board with respect to Financial Disclosure Statements. One of them is simply holding them in a clerk fashion, and the other is reviewing them. And I'd like to talk to you about what that review process is because that relates to the release process.

CHAIRPERSON FLEMING:

And maybe if I could just, you know, put a finer point on that. Are you saying then in the particular instance of the FOIL -- the denial of the FOIL request for ADA Prudenti's Financial Disclosure Form, one of the bases was that it was under review? Is that why this is relevant? Because I don't remember seeing that in Ms. Segal's letter denying the request. But is that what you're saying today?

MS. SPAHR:

That was in the letter, yes, the letter that you attached.

CHAIRPERSON FLEMING:

So you're telling us about limitations when a document is under review because of its direct relevance to the fact that that was one of the bases for which you denied the disclosure?

MS. SPAHR:

Correct.

CHAIRPERSON FLEMING:

So go ahead. Hold on one second, please. So if you could just direct your remarks in that regard to how it's relevant to the question at hand, which is the denial of Mr. Prudenti's Financial Disclosure, and specifically if you're saying it was under review, by whom was it under review and what did that review consist of.

MS. SPAHR:

Right, and that's what I'd like to explain, is what the review process is for the Financial Disclosure Statements.

CHAIRMAN FLEMING:

Ms. Spahr, I'm sorry, but we're not so interested, although we need some background and context, we're not so interested in a grand, you know, expose on the review process. We really need to know if the claim is that one of the bases for denial was that it was under review. Direct your comments please to that, and if this document was under review, by whom was it under review, and if you could just describe that. I think that would be most helpful to our inquiry today. We're going to try to, you know, get through this in an expeditious fashion.

MS. SPAHR:

Okay. With respect to the specifics of this particular review, since the letter was issued by Ms. Segal, she would be the appropriate person to answer the specific reasoning in the statement. However, I think that it's important for this Legislature in evaluating this process because it's a larger picture.

CHAIRPERSON FLEMING:

Understood, but I just need your comments to stay relevant to the issue at hand, which is the denial of the Financial Disclosure Form and specifically this Financial Disclosure Form. So if Ms. Segal is going to answer that, perhaps you don't need to go into it in depth and we'll just let Samantha handle that, because that's really what the question is, on what basis was this denied. So if you're not prepared to answer whether it is under review, why don't you just move on.

MS. SPAHR:

Okay.

CHAIRPERSON FLEMING:

Thank you.

MS. SPAHR:

Is the Legislature not inclined to hear what are the conflicts that we look for in Financial Disclosure Statements, how we act on them, the types of conflicts that we have found in Financial Disclosure Statements and the actions that government has taken as a result of our Financial Disclosure Statement audits and reviews, including those of the current Financial Disclosure Statements that are the subject of your review?

CHAIRPERSON FLEMING:

Right. That's a long question.

MS. SPAHR:

Sorry.

CHAIRPERSON FLEMING:

I appreciate your conscientiousness. We're looking to determine the underlying bases for the denial in order to take a couple of steps, in order for the public to understand, in order for the Legislators to understand, in order to understand if this Legislative scheme is one that needs tweaking and changing. So to the extent that it applies directly to this decision which, as I said, has raised some significant concerns, then sure, go on. I believe you said that you have a policies and procedure manual that you will be providing?

MS. SPAHR:

Yes.

CHAIRWOMAN FLEMING:

And does that describe the conflicts that you are just referring to?

MS. SPAHR:

Yes. It also includes the -- so I'll just go to the point. It specifies the types of audits that are done or that have been appropriately done or authorized to be done on Financial Disclosure Statements.

CHAIRWOMAN FLEMING:

Perfect.

MS. SPAHR:

It looks at specifically outside employment. It describes the review process for making sure that employees or other public officials that have outside employment comply with the standard operating procedures of the County.

CHAIRPERSON FLEMING:

That's terrific. So you're providing that policies and procedural manual for us, right?

MS. SPAHR:

Well, that particular resolution. I thought that it might be helpful for the Legislature to have an understanding of the broad impact that those first two years of reviews had since that led in part, I believe, to the change in the numbers of people that were required to file.

CHAIRPERSON FLEMING:

Understood. And I appreciate it and I think we've heard, you know, your challenges and concerns with regard to that transition. Once again, we're very appreciative. It is a difficult time in County Government and we're moving forward and we want to be supportive.

So to the extent that your comments can guide us in that respect that's fine, but today we do have a limited agenda, so it sounds as though if you're providing the procedures manual, and you've described the background for us, if Ms. Segal can give us the specifics with regard to how those policies and procedures apply to the specific decision, which is a question for today. Then I think maybe if you want to wrap up and we can move on to Ms. Segal I think that may be helpful. And my colleagues here will be asking you questions at the conclusion of your -- all of your remarks, so we can get to anything that we feel that hasn't been asked.

LEG. HAHN:

And I am very interested in what you were going to present, so if you could just tell us what page you left off at so we can catch up and read the rest of it, you know, on our own.

MS. SPAHR:

Yes, 13.

LEG. HAHN:

Thank you.

MS. SPAHR:

Did you get a copy? We'll submit copies. We need somebody to copy that.

LEG. HAHN:

Yeah, you said you were going to submit that for the record, so I just want to be able to get it.

MS. SPAHR:

Yes, absolutely. Here, I have a clean copy.

LEG. CALARCO:

Amy will make a copy.

MS. SPAHR:

Thank you.

CHAIRPERSON FLEMING:

Does the committee want to take a brief break? We can get a copy of Ms. Spahr's written comments and then we can see. Why don't we just take two minutes. Amy's going to -- we'll get a copy to you and then we'll move on. Thank you. So let's take five.

MS. SPAHR:

Thank you.

*(*The meeting was recessed at 11:26 a.m. and reconvened at 11:33 a.m. *)*

CHAIRPERSON FLEMING:

All right, could members of the committee make your way back to the horseshoe? So back on the record. We do now have a copy of your written statement, which is 21 pages long, and we do appreciate your thoroughness. I don't want you to take away from this that anyone is questioning the conscientiousness of anyone on this Board. We're really trying to understand the basis on which you're acting so that we can give you guidance and we can understand if adjustments need to be made to the Legislative scheme because things may have not turned out -- you know, because of an outcome that is maybe not in keeping with the original Legislative intent. So that's really where we want to keep our focus. So I apologize for cutting you off, but I do think we need to keep it in sort of a contained area of inquiry.

So to that effect, as I said, I think the conflict of whether this disclosure form was under review is a very important aspect of your testimony, and if it's something that you feel more comfortable that Samantha address, Ms. Segal address, I'd say go ahead and do that. If there are other things knowing, you know, what the areas of our inquiry are, if there are other things that you want to briefly bring to our attention that would be wonderful. We do have your full written statement and all of the members of the committee will be asking questions at the conclusion of everyone's talk. So, please, continue.

MS. SPAHR:

I think I will turn this over to Mr. Gross at this point.

CHAIRPERSON FLEMING:

Thank you.

MR. GROSS:

I fully appreciate your time constraints and I will be very brief and kind of try to set the table for the questioning and presentation by Samantha. Number one, we are under the, as Mr. Nolan knows being in court with me yesterday and as the Chair mentioned, there's an existing Temporary Restraining Order relative to release of the documents, so anything with respect to the content of that document or that touches on it, very respectfully I think we have to obey the mandate of the court and not discuss with you directly. That doesn't, however, mean there won't be a discussion as to why the or the bases upon which the FOIL request was denied won't be addressed, but just with respect of the content of that document we cannot because of the mandate of the court.

And secondly, Chairman Fleming, the point you made about tweaking the statute. There's one point we really want underscored with this committee that has created perhaps the situation we're facing. The Chair mentioned the role of the Board with respect to the Freedom of Information Law. Not the Board, but Samantha with respect -- Ms. Segal with respect to the Freedom of Information Law and the confidentiality provisions of the statute. The statute is extraordinarily express and limited as to confidentiality, and indeed if confidentiality is breached by a Board member, by a staff member, including the Executive Director or by Counsel, that could lead to a misdemeanor charge or a fine of up to \$1500.

CHAIRPERSON FLEMING:

Mr. Gross, let me just clarify. You're referring to the Administrative Code Section A30-8 Confidentiality?

MR. GROSS:

Correct.

CHAIRPERSON FLEMING:

Thank you.

MR. GROSS:

The problem that has arisen is the duality of function imposed on the Executive Director. In July of 2013, a Memorandum of Understanding was issued by the County Attorney declining to play the role of records appeals -- FOIL Appeals Officer. The reason for that was because of the confidentiality provisions. Unfortunately, that authority then devolved to the Commission and the Executive Director herself. We then have this duality created by the statute that leads to an extraordinarily conservative approach in FOIL review.

On the one hand, if an officer -- forgive me, a staff member or Board member or Counsel can be accused of release of confidential information, criminality attaches. On the other hand, the goal of the FOIL statute is to release to the public information it ought to have. Naturally, we approach any FOIL decision on a very conservative basis, and you'll hear from Ms. Segal that we consulted -- she consulted with Federal law enforcement agency, Federal FOIL agencies, that led to the conclusion that the FOIL be denied, particularly in view of the extremely difficult and strict confidentiality requires of the statute, leading to the suggestion that this committee, and perhaps the Legislature ought to think about amendment of the statute relieving the Executive Director of the responsibility to make FOIL determinations and just have to abide by the strict confidentiality requirements which you obviously impose to protect public employees who file FDS's.

CHAIRPERSON FLEMING:

Let me just clarify what your point is here. So what you're saying -- because my understanding of the Confidentiality Law is that information obtained by the Board, the Ethics Board, in connection with the preparation of an advisory opinion or the investigation of a complaint or referral is confidential.

MR. GROSS:

Yes.

CHAIRPERSON FLEMING:

So my question once again is, is the basis -- because I can't -- I do not understand how the other bases that were put forward in Ms. Segal's letter apply in this instance. But so my question to you is, is the fact -- is it a fact that this form was under investigation or the subject of an advisory opinion? Because from my perspective, that's what puts it in the confidential realm. So that's just a yes or no, Mr. Gross.

MR. GROSS:

It was.

CHAIRPERSON FLEMING:

It's under investigation.

MR. GROSS:

It was under investigation at the time the FOIL request was submitted. County Executive Bellone sent a letter to the Commission to take a look at the entire allegations he made regarding Mr. Prudenti, and indeed the FDS which he had filed became part of the review investigation by the Board. That was the very basis, frankly, upon which we provided advice, I've informed Mr. Nolan of this, that we would comply with the two-thirds vote of the Legislature to produce the document because it can only be produced if it's in connection with an investigation and it was.

CHAIRWOMAN FLEMING:

Understood. And you said it was. So the operative tense is the past tense, as it no longer.

MR. GROSS:

Correct. And there was no subsequent FOIL request. There was no appeal of the underlying decision. Interestingly, tomorrow --

CHAIRPERSON FLEMING:

Let me stop you there. There was no appeal of what underlying decision?

MR. GROSS:

I mean an Article 78. There was no challenge to her determination by Newsday. I --

CHAIRPERSON FLEMING:

Hold on, hold on. My understanding is that what you're saying the basis of the denial was the fact that the County Executive had filed a complaint and it was under investigation.

MR. GROSS:

It was the investigation and review by the Board in response --

CHAIRPERSON FLEMING:

To the complaint.

MR. GROSS:

To the -- well, communication, let's put it that way, filed by the County Executive, correct.

CHAIRPERSON FLEMING:

So you do not consider that to have been a complaint?

MR. GROSS:

Sure, you can characterize it as a complaint. Certainly we consider it to fall within the definition of investigation.

CHAIRPERSON FLEMING:

So what you're saying is that at the time that Newsday presented the FOIL request the Board considered that the information fell under the confidentiality provisions because it was part of an investigation connected with that complaint.

MR. GROSS:

Not the Board. The Board was doing the investigation. The decision was --

CHAIRPERSON FLEMING:

The FOIL Officer, understood. So the FOIL Officer believed that the information was confidential because it was being reviewed as part of an investigation that was triggered by the complaint of the County Exec.

MR. GROSS:

Yes, and --

CHAIRPERSON FLEMING:

And you're saying -- sorry, because my brain doesn't function terribly well so I just need to keep my questions going. So what you're saying then is -- I think what you said is that that is no longer the case. That that was, and it's no longer the case. That investigation has concluded?

MR. GROSS:

Yes.

CHAIRPERSON FLEMING:

And what, if any, what is the result of that investigation? Have you issued an opinion? Have you issued any kind of findings?

MR. GROSS:

No.

CHAIRPERSON FLEMING:

Okay. So I think the legal -- I think the structure requires that the party that asks for the investigation be noticed, be notified of the results of the investigation, no? But you're saying the investigation is over. I just don't know that there's been any response.

MS. SEGAL:

I'm sorry. Can I address that? Any time a -- any time any submission is made to the Suffolk County Board of Ethics it is entered onto to the next agenda for Board consideration. If the Board decides to proceed with fact finding or a self-initiating complaint, if it doesn't come in the form of a complaint, a fact finding is then commenced or an investigation is commenced. At the conclusion of whatever type of review proceeds, that individual will get confirmation if the -- as to the status of the review being concluded or if any further information is needed from them. If a complaint, in fact, is dismissed, individuals are notified because they have the right to resubmit three times within six months. They're not prejudiced in any way from resubmitting with additional evidence in the future.

CHAIRPERSON FLEMING:

Okay. I'm just confused because I thought what you said was that the information was no longer subject to the investigation, and yet my understanding is there's been no notification to anyone who --

MR. GROSS:

There was a letter to the County Executive informing him that no further action was going to be taken.

CHAIRPERSON FLEMING:

Okay. I'm not aware of that letter. What is the date of that letter?

MR. GROSS:

I'm sorry, I don't -- it was within the past month or so.

CHAIRPERSON FLEMING:

Could we get that for the record?

MR. GROSS:

Sure. If I may, just getting back to the --

CHAIRPERSON FLEMING:

I'm sorry. Just so that I'm clear. My understanding is that the Board needs to find no reasonable cause in order to move forward, correct, the standard is reasonable cause? And now findings, isn't it the case that there are findings required to be issued? I read all of this late last night, but don't you need to issue findings to support the conclusion that there's no reasonable cause to believe there's a violation subsequent to a complaint?

MR. GROSS:

If I may. The term investigation under the confidentiality statute we interpreted to be rather broad. The County Executive did not file a formal complaint. It was not treated as a formal complaint. The Board did not decide to convert it into a self-initiated investigation and review. We try -- in order to comply and meet the requirements that the Legislature imposed of release of the document by the two-thirds vote we had to find a basis, and the basis was to interpret the word investigation rather broadly. It was reviewed by the Board, the complaint made or the document submitted by the County Executive. We deemed that sufficient to fall under the exceptions of the two-thirds vote so that we could get you the document which we fully intended to do this morning, but have been prevented by the Temporary Restraining Order.

I might also add that the court is reviewing that document and intends, at least from my read of our argument yesterday, to -- after in camera review, perhaps redact it to the extent to that the Judge thinks it's appropriate and then release it. That's what -- this is a relatively complicated matter. We tried to comply with what you wanted, the Legislature.

CHAIRPERSON FLEMING:

Can I just ask you, it's relatively complicated because under this broad view of investigation, it was at one time the subject of the investigation, that investigation was concluded.

MR. GROSS:

Correct.

CHAIRWOMAN FLEMING:

And when the Procedural Motion was issued that investigation had been concluded, but we didn't get the document.

MR. GROSS:

Well, we intended to give it to you today, but we were prevented by the Temporary Restraining Order.

CHAIRPERSON FLEMING:

But the FOIL request was in place after the -- if you say -- and it would be nice to have the letter that notified the complainant that that investigation had concluded without finding reasonable cause, but -- and by the way, will there be any findings issued with regard to that investigation?

MR. GROSS:

No.

CHAIRPERSON FLEMING:

Okay. So but at any rate, from the timeline you seem to be laying out, it does seem that the FOIL request was still in place subsequent to the conclusion of the investigation.

MS. SEGAL:

In terms of the timeline that's not accurate.

MR. GROSS:

That's not accurate. The FOIL --

CHAIRPERSON FLEMING:

But why didn't you just give it to Newsday once the complaint -- once it was no longer the subject of an investigation?

MR. GROSS:

Going back to my very original point, we have an extremely tough statute relative to confidentiality, and we have advised our client to be extraordinarily careful. In the absence of an appeal by Newsday to the newspapers -- to the courts, forgive me, and perhaps at that point maybe working out some kind of redacted document in an exchange, in the absence of that, we, because of a very conservative approach in that confidentiality provision, determined not to release it to Newsday.

CHAIRPERSON FLEMING:

Okay. I think we understand your reasoning. And so the primary reasoning, it wasn't what's spelled out in the letter, but it's basically because it was the subject of an investigation.

MR. GROSS:

It is in the letter. It's in the letter of denial to Newsday.

CHAIRPERSON FLEMING:

Right, but there are a number of bases that are listed including a law enforcement safety issue. I don't have the letter.

MR. GROSS:

Well, Madam Chair, you're an attorney, and you know we raise, as attorneys, every possible argument we can in favor of our client. I think there is a good faith argument based on Federal decisions under the Federal FOIA Act, which the Committee on Open Government says we can follow as pervasive -- persuasive authority that the release of any information, personally identifiable information regarding a law enforcement officer at the Federal level, is not done. So that ties into the New York State FOIL Statute which prohibits the release of documents that would otherwise constitute an unreasonable interference with the privacy of a particular individual. So, yes, we raised all sorts of issues, but one of the issues on page two is active audit of Board records. At the time the appeal was issued, the Board still had this under investigation and review.

CHAIRMAN FLEMING:

Okay. So I'm just -- it's on the third page of your -- of the letter from July 11th. I just note the heading is Suffolk County Administrative Code Section A30-8A that I believe you're referring to, and my question then is it sounds to me as though --

MR. GROSS:

Forgive me, Madam Chair.

CHAIRMAN FLEMING:

That's not correct?

MR. GROSS:

Page two, Active Audit of Board Records. The requested record is currently under review, and that was at the time of the appeal.

CHAIRPERSON FLEMING:

Okay, that was on July 11th. And you did not consider that once the review was concluded that that no longer lies and that you could have then released the document?

MR. GROSS:

Again, because of the Legislature's adoption of a statute with an extraordinarily strict confidentiality rule we were not volunteering any information.

CHAIRPERSON FLEMING:

Because I think we may have discovered a place where we really need to take a very hard look at this legislation. I know that Ms. Spahr had mentioned in her comments that there's a balancing between confidentiality and other considerations. I mean, we've got to be clear here, the name of the document is Financial what? Disclosure. The point of the document is disclosure. So to the extent that you're balancing -- doing a balancing task and we are -- where the law is leading you to come to a conclusion other than disclosure, I think we've got an issue there.

MR. GROSS:

You do, and I go back to what I began by stating at the beginning of my presentation that what you ought to do, in my opinion, is amend the statute, take away the FOIL responsibility from the Board. There will no longer be a conflict between disclosure and confidentiality. We'll obey the confidentiality sections. Perhaps they need to be looked at, too, and you can delegate the authority to an outside agency. The County Attorney refused to do it. We had to undertake it to comply with the FOIL statute.

CHAIRPERSON FLEMING:

Understood.

MR. GROSS:

I sincerely suggest you look at that.

CHAIRPERSON FLEMING:

And that's a good point that we've learned here. Ms. Segal, did you want to address the committee?

MS. SEGAL:

Thank you. If I could, I just wanted to expand upon a few things that Ms. Spahr has spoken to today. Overall, I believe all of you have been in our ethics trainings that we conduct in this County, and a portion of that training does address Financial Disclosure Statements. Financial Disclosure Statements, as you pointed out, are for the purpose of disclosure. That disclosure, as viewed in our office, is for the ability of the Board and other regulatory authorities to be able to assess potential conflicts. Our agency is not exempted in any way from County audits, from State audits, from Federal audits or from any type of outside review. The only special limitation we have, as Counsel has pointed out, is this confidentiality clause.

This confidentiality clause does not carve out an exemption for FOIL productions. It does not carve

out an exception for immunity to a FOIL Officer producing a record that may be under Board review. So in assessing these types of FOIL requests that come in -- I'm sorry about that -- in assessing FOILs when they come in, obviously we process them under the State requirements in terms of time frames. We reach out to individuals that the documents are the subject matter of to assess any type of privacy statements they have on file.

For the Legislature's understanding, in 2014 the Suffolk County Board of Ethics did adopt a resolution with respect to standardized redactions because repeated privacy requests that come in annually are for the same subject matter and the Board approves them on certain subject matters of personal information.

Currently, and in the event that the legislature is looking to address how productions occur, whether they be through FOIL or other types of production, the current Board policy redactions include on financial disclosure statements: home addresses, home telephone numbers, the names of spouses or domestic partners, the names of unemancipated children, and categories of values. Again, those go to after an analyses of invasion of privacy through FOIL laws, those are the areas that seem to be supported in case law.

Additionally, because public servants do deal with the public in many capacities, currently the board also at times does not release documents, including financial disclosure statements, if the filer advises the board if they live underneath a temporary restraining order and they currently are under a safety risk of some type, if they are co-habiting with family if the filer or filer's children are domestic abuse victims, or filers with corroborated criminal threats.

So in reviewing any type of record release, those type of assessments do go into play but they do not impact the Board's ability to assess conflicts, to run internal investigations, or to provide the records, if required, to the legislature if you are doing an audit or review additionally.

CHAIRWOMAN FLEMING:

Can I just interrupt you for a second.

MS. SEGAL:

Sure. Please.

CHAIRWOMAN FLEMING:

So we all know that the forms include an opportunity for the filer to request confidentiality. Was that done in this instance?

MR. GROSS:

Could we get back to you on that? I'd like to think that through, apropos of the TRO.

CHAIRWOMAN FLEMING:

Understood. I think it's a very important question.

MR. GROSS:

I appreciate that.

CHAIRWOMAN FLEMING:

So if at the conclusion of our session today -- is that what you're asking? We don't have another session scheduled.

MR. GROSS:

Can I submit a letter?

CHAIRWOMAN FLEMING:

Yes, that would be fine. Thank you. If you are submitting a letter, Mr. Gross, I think it would be interesting to know not only whether this particular filer requested confidentiality but to the extent that other filers may request other confidentiality how that is handled. In other words, can it be the subject of a simple redaction that doesn't prevent the disclosure of the document altogether?

MR. GROSS:

I think the second part of your question, my only caution is with respect to the particular individual whose FDS is the object of --

CHAIRWOMAN FLEMING:

I appreciate that, and nobody wants to wants to get Judge Spinelli upset.

MR. GROSS:

But, however, the second part of your question, I think Samantha can answer right now.

CHAIRWOMAN FLEMING:

Thank you. Go ahead.

MS. SEGAL:

Could you please repeat the question?

CHAIRWOMAN FLEMING:

To to extent that a filer asks that the disclosure be treated under confidentiality review, isn't it perfectly possible to redact the document, to the extent that that, if it's valid, is honored, but the public is still honored, so to speak, in getting the disclosure? That's really the point of financial disclosure, is public disclosure.

MS. SEGAL:

Sure. At times. The Suffolk County Board of Ethics staff, which is myself and the confidential secretary, we have no independent authority in the office to change board policy, board resolutions or board procedures between board meetings without presenting it to the full board. Currently policy number two of 2014 sets forth different disclosure mechanisms, redaction policies, and times when documents, including financial disclosure statements are exempted from production, and those are underneath Freedom of Information Law's exemption for endangerment of life or safety of person or persons. If one of those exemptions applies when we review a document, it goes underneath that category. Should the board at some point in time review that and revise the policy to change that document to be in redacted form only, the staff would comply.

CHAIRWOMAN FLEMING:

So the only instance under which you wouldn't release the document at all is the life safety question, according to policy you just read from.

MR. GROSS:

Well, if it involved a child or abuse situation, that might also lead us not to release it.

CHAIRWOMAN FLEMING:

Safety. Okay. Thank you. I've interrupted you. Why don't you go ahead and finish. I'm sorry.

MS. SEGAL:

As I said, the policies themselves, the Board staff has no independent judgment to change between board meetings, so those are the rationales that set forth for nondisclosures. They are in the board

member reference manual that Ms. Spahr is submitting, and they have been submitted to the legislature in the past as attachments to the annual reports. And as our board is formed by the legislature, the Board is open to any type of feedback with respect to policy amendments that you feel would help function the office in any type of streamline or more transparency.

CHAIRWOMAN FLEMING:

Thank you. We have a list of questioners starting with Legislator Spencer.

LEG. SPENCER:

Thank you. Good afternoon. First of all, I'd like to just acknowledge the members of the public who I noticed who are here, and because of the format of special meeting, I'm sure that they have comments and things that -- due to the structure -- but we are sensitive to, kind of, your concerns. I think there's a greater issue that we're concerned about with corruption and the perception of corruption and some of the bigger challenges that we're facing as far as just a crisis of government and with regards to people's confidence, and you play such a critical role. I really wanted to express my appreciation to the ethics board, and I'll keep my comments -- I have a lot more comments, but I will really go right into questions just because I know there's going to be a lot of speakers.

One of the things I noticed during the initial presentation was that the ethics board does not alter the disclosure form as prescribed by the legislature, and I think that it's ironic that you seem to be focusing kind of on the legislative intent; but on the other hand, it seems that when it comes to how those disclosure forms are handled, it seems that there's some interpretatio there, so it seems from my perspective, when I look at legislative intent, when I see financial disclosure and when I fill out my financial disclosure records, I'm filling those out as if it's going to be on the front page of the paper. It's disclosure, and as I look at the original bill, that seems to be the purpose but you did describe a conflict with regards to serving as the FOIL officer but also Ethics Board in terms of how you handle confident information being the one place where you can be sanctioned.

So, Ms. Segal, when you receive this request, and let's say it's under review, was there any consideration given as far as saying that we will comply with the request at the conclusion of the review; or it was denied and reasons were given that it was denied but could it have been said that, you know, there's a review underway and we don't know when this review will end but at the conclusion of the review, the documents will be released.

MR. GROSS:

If I may. As the chair pointed out, the review reason for the denial of the document was not the only reason. There were other articulated reasons; in particular, the law enforcement status of this individual and persuasive federal authority.

LEG. SPENCER:

Sure, I get that, and that was my next question. But I envision a situation where if this request comes in and you're looking at it, and there are particular concerns, could it have been possible that information could have been redacted that would have been the concern with regards to safety and then perhaps a response saying that -- could there have been compliance with the FOIL request and with limited information as opposed to a complete denial? Could you have addressed all of those concerns with perhaps waiting until the review was completed than submitting redacted information?

MR. GROSS:

Look, that certainly could have been done; however, there's a very difficult task that's imposed on the executive director and the board relative to confidentiality, and if an exception or a decision is made in a particular law enforcement case, what do we do with the next one? So frankly to comply with the confidentiality requirement, there's kind of a standard across-the-board determination

made of non-release of the FDS in the event that it's a law enforcement officer, if that decision is corroborated, let's say, by the documents.

CHAIRWOMAN FLEMING:

I have to interrupt for a second. Is that whether or not the individual filer asks for confidentiality?

MR. GROSS:

I'm talking with respect to a FOIL request.

CHAIRWOMAN FLEMING:

So any law enforcement officer, you're denying FOIL requests for all law enforcement officers regardless of whether whether they ask for confidentiality?

MS. SEGAL:

Just to be clear with respect to that, the FOIL statute obviously doesn't address Suffolk County's code directly, so we do have to assess FOIL exemptions on every document that comes in. That's currently how the office runs. There is a distinction, if I could address Legislator Spencer's observation, with respect to elected officials submitting financial disclosure statements. Elected officials do hold themselves out to the public with a different level of privacy than an appointed or a subordinate in a department. I can set forth quite clearly that out of the 162 FOIL requests that we have received at the Suffolk County Board of Ethics, this is the only nonelected law enforcement individual that we've had to assess in this capacity. So in terms of the analysis that went into this specific request, I viewed it as categorical, so the research that was performed on it was very exhaustive and comprehensive because, as you pointed out, it may lay a standard going forward since this was our first non-elected law enforcement individual who had been foiled, so the review of it at this point, obviously, we take very seriously because it may create a standard not only for our office but in the event an Article 78 was taken on it, the outcome in state court may affect other law enforcement personnel in this county.

So as we are going through this, obviously a first-time request upon us on a new category of individuals, we do review exhaustively. And as Counsel and Ms. Spahr has pointed out, I did confer with multiple other government attorneys to handle these types of records to see what the standards are in their departments as well at other levels of government, and this was my legal conclusion of this category of filer at this time.

LEG. SPENCER:

With regards to this particular request, can you give me a sense of when you started this review process of was it a difficult decision? Did you look at this and immediately within just thinking of the statute, that you said *I have to deny this*, or was there a -- was this a difficult deliberation? And my follow-up to that is are you the ultimate decision-maker, Ms. Segal, if you have a situation where you're just torn, is that a situation where you would speak to Counsel or refer to the board or do you unilaterally make that decision?

MR. GROSS:

My two cents --

LEG. SPENCER:

I do appreciate your two cents, but that's a direct question to the person. I would love to hear her two cents first, if I could.

MS. SEGAL:

There really is no distinction with respect to this filer versus another filer. The procedure does not change. The original FOIL request goes into the FOIL officer, the appeals go to me, and Counsel is

consulted with throughout the process with all FOILs, so there really is no distinction in terms of this individual filer. Whether or not, as I said, there's only been three FOILs that have been denied by our office out of over 160 documents over the years, and specifically with respect to, as I said, if there's a new category of individual who is being FOILed, it includes consults with Counsel, because they obviously are the Board's counsel that can foresee impact on the board and that's their requirement, and we were apprised in this MOU with law department that outside counsel would be the ones involved in Article 78s. So we are preventative, so I always speak with them before any type of new decision is made in that capacity in terms of legal analysis, as I am the only licensed professional in the office.

Additionally, when we do these different types of review, I do reach out to the New York City Conflicts of Interest Board's annual disclosure director to see what their standards are with different types of filers, as well as the federal government and the state government to see where they sit with legal trends specifically with release and those reviews and those types of outreaches were conducted with this. It was not a quick decision in any capacity, to address your question.

LEG. SPENCER:

And just, briefly, let me be clear: I completely understand the position of making a judgment call, and I think you guys have done fantastic work so this is not an oppositional line of questioning. It's really more for me as a legislator to see place where there can be clarification with regards to the statute of the law from our point of view to make it a little clearer. But at the end of the day, after you reach out and you talk to Counsel and you talk to all these different -- you ultimately made the final decision?

MS. SEGAL:

On FOIL appeals?

LEG. SPENCER:

Yes.

MS. SEGAL:

I'm the assigned FOIL appeals --

LEG. SPENCER:

You're the decisionmaker.

MS. SEGAL:

Unless an Article 78 is taken; then state court can disagree.

LEG. SPENCER:

Fair enough. Counselor, you had something to add initially? I didn't mean to cut you off.

MR. GROSS:

Samantha answered.

LEG. SPENCER:

She answered? All right. In your current position right now, you mentioned in your presentations that the fact that you are the FOIL officer but you're on an ethics board that you're dealing with confidentiality, do you feel that the law does need to be further clarified or is this something that having that role of being the FOIL officer would be something better if it was separate; would you personally like to see that responsibility taken away or handled differently?

MS. SEGAL:

I think the the position of executive director and the position of FOIL appeal officer has some incompatibility concerns at times when the confidentiality law is on top of it. Whether it be someone outside of our agency that should hold that role or additional staff, as Ms. Spahr has pointed out, I think that the division of power -- division of authority would be better suited for an investigatory body.

MR. GROSS:

There's a reason that the county attorney is the records' appeals officer for the entire county, and the reason is that you can get a determination that isn't necessarily influenced by other responsibilities of the agency whose document is sought to be FOILed. So in our case, unfortunately, we're the only agency that the county attorney declined that role, and the point I was making is I think legislatively you ought to take a look at separating that function.

LEG. SPENCER:

If we were to separate that function, just from your experience being the people that are in this position, with existing infrastructure of government, without creating more bureaucracy, is this handled differently in other municipalities; and if that role should be separate, could it be the legislative attorney? Where would you -- and you may not have an answer to this -- but where would be kind of a place that we would limit some of the conflict? Should it be with the board, should it be with the legislators. Do you have an opinion? You may not, and I'm fine if you don't.

MS. SEGAL:

It is not something that the board has deliberated at length at the time other than to be aware of it. That being said, other municipalities at times do have the county clerk's office.

LEG. SPENCER:

The county clerk's office?

MS. SEGAL:

At times, because it seems to be a fairly routine matter just to handle documents in that capacity, but we have not addressed it at length.

MR. GROSS:

Anything the legislature would do would have to carefully absolve the FOIL officer from any confidentiality implications arising from the existing statute.

LEG. SPENCER:

Certainly.

MS. SPAHR:

I was just going to add that having another entity host the documents or clerk the documents, as I had spoken about earlier, would not necessarily interfere with the ability of the board to do its review function and to look at conflicts of interest to obtain the documents, and it could make more clear cut that distinction so that -- as you pointed out, there were really two groups of reasons that were cited in the appeal denial letter. One was the "it's under review" part, and the other one was the "privacy/ law enforcement" part. It would have separated those two reasons because if we, as the conflicts of interest board, had those physical documents in our possession for review, then somebody FOILING them from the hosting agency would have gotten a simple and clear cut, *They're under review, we don't have them*. Then, if and when those document were returned to the hosting agency because the review is complete, there would be a separate analysis and determination about whether those second reasons apply. They wouldn't be grouped together, and that's where we're talking about this kind of problem of clarity and understanding and separating of those roles. So it's not that it needs to be done that way but it would help to clarify.

MS. SEGAL:

Just to address Legislator Spencer's earlier question about the administrative timing of FOIL releases, there are many situations, not just this situation, where a FOIL request comes in for something that's on the subject matter index and the document is either not ready to be produced for a multitude of administrative reasons, whether it's under a board review, whether it hasn't been logged in yet as an FDS file, or with the proper clerking system. We do communicate with FOIL requesters that the document may not be ready for a certain amount of time, do you want us to hold the FOIL request open, do you want the determination at this time because this is the day it's required under law, do you want an extension on it; so we do have an open communication with FOIL requesters, and we do absolutely look to accommodate FOIL requesters in that capacity.

LEG. SPENCER:

So that begs the follow-up question, why wasn't that done in this case?

MS. SEGAL:

I did not testify that it was not done in this case. I did not testify to that.

LEG. SPENCER:

I guess, at least my understanding is, the reason we're here was because it was denied, so what you are describing there is communications with the FOIL requesters that would be in lieu of a denial, that would be, for instance, it's under review, we'll keep the FOIL request open. So my understanding in this is that there was a deny and the FOIL request was closed, so that's why it was taken as the reason. So was this done in this case where there was communication?

MS. SEGAL:

Like I said, that's the protocol of the FOIL officer in every FOIL in terms of communicating. I don't know of any exemptions that it hasn't -- that it didn't occur on. I mean, I would need to pull the FOIL file itself in terms of the timeline, but in any event, no one is precluded from putting in an additional FOIL at any time with respect to any FOIL.

CHAIRWOMAN FLEMING:

So you're saying that if the FOIL request had been submitted subsequent to the --

MS. SEGAL:

It would go under a new review. They don't carry over from one to the next. We would certainly review it as a new request.

CHAIRWOMAN FLEMING:

Would you have then released it?

MR. GROSS:

Perhaps, as was pointed out by the chair, the audit review exemption would have been over; however, in Ms. Segal's denial letter, as the chair pointed out, there are several other grounds. So my suspicion would be that the denial would still continue on the other grounds even once the audit was completed.

CHAIRWOMAN FLEMING:

This is very, very important to get clear. You're saying the investigation is over, so that basis no longer applied if they were to have submitted another FOIL. However, you would still have denied it because you are applying a blanket exemption for law enforcement based on the federal statute that is cited here in the letter. This is very, very important.

MR. GROSS:

I agree. I apologize before for giving you the impression that there's a blanket prohibition on release of law enforcement FDS, as that's not the case. Each one is reviewed individually. The point I was trying to make, however, was that the law enforcement concerns expressed by all the federal agencies are very important concerns, and they do come into mind on every review, in this review particularly since this was the first one, of law enforcement officers. It's a very important area. I'm sure you all can appreciate the concern of safety for law enforcement officers.

CHAIRWOMAN FLEMING:

I just don't think it applies here. I was an assistant D.A. for 10 years. I do not think the federal statute applies in this case.

MR. GROSS:

If I may, the committee on open government two weeks ago, a month ago, said that you can rely on the case determinations under the federal statute. You're correct; federal statute doesn't apply, but the Committee on Open Government said their reasoning in cases and opinions that are issued pursuant to the federal FOIA statute may be considered by a FOIL officer in New York State under the privacy exemption. It's a very recent determination involving Mr. Perhopio (ph) and the governor by the Committee on Open Government.

LEG. SPENCER:

At best, I understand that it was a judgment call, and you had very specific reasons, and it was difficult, and I think the part where I maybe would slightly have a difference of opinion with regards to how it was handled was that, well, it was denied on these two basis, but frequently when there are FOIL requests, we bend over backwards. We'll say, *We're going to keep it open, we'll give you information, we'll communicate with you;* but in this particular situation, it was denied, and I understand the two reasons why. And I guess I was trying to understand if there was some communication on this request that would have been kind of an effort to try to honor it or accommodate it or keep some, I guess, open process, and it seems like that that wasn't the case in this particular situation, and I think that that's where I'm kind of hung up because you're almost talking about yourself in the third person. You're saying we always try to do everything --

MS. SEGAL:

You have to understand, not that the third person, but I'm not the FOIL officer. I'm the FOIL appeals officer, so just in clarifying that, that's why it was a two-step process. In speaking with Counsel and just in looking at the FOIL officer notes, there is a note here that says that the 6/24/16 FOIL denial letter, in quotes, left open in the event review is lifted but had to reassess the exemption production properly at that time.

LEG. SPENCER:

Okay. In the interest of having us not be here all day, because I've got a lot of stuff on my mind, but I think some of my colleagues may answer other questions, but, Madam Chair, all you, but I reserve the right to ask further questions.

CHAIRWOMAN FLEMING:

You're always welcome, Doc. Legislator Hahn.

LEG. HAHN:

I am very confused. Sitting between lots of attorneys going back and forth is difficult, so I apologize if I'm going to repeat questions and ask you to slowly explain your rationale. I really have two pressing items. I can't really decide which one to go first, so I'm just going to continue on with what we were talking about just before. I don't quite understand the law enforcement exemption in this case. Please help me, as someone not in law enforcement and someone not an

attorney, understand why you can't just redact home addresses, childrens' names, maybe locations of employment but give us income and their sources.

MR. GROSS:

Unfortunately, it may go to the content of the subject document, which we really can't get into.

CHAIRWOMAN FLEMING:

I can say it is within the purview of the committee to move into executive session with a majority vote to discuss some of that stuff, if you need that, Kara.

LEG. HAHN:

I do need that, but maybe I'll ask some other questions --

MR. GROSS:

Apropos of that observation, Madam Chair, the fact that you go into executive session, we still have the TRO hanging out there.

CHAIRWOMAN FLEMING:

Understood. I think we can discuss --

MR. NOLAN:

I think that Legislator Hahn's question may have been more general and not really applicable necessarily to the filing of Mr. Prudenti.

LEG. HAHN:

Yes. So without going into the details of this case or maybe just answer it is specific to this case and I can't explain, how is a law enforcement exemption applicable to an assistant district attorney, you know, redacting the very personal family info and home address information, but the actual financial disclosure, sources of outside income, and et cetera, which is very critical to conflict of interest in an area that is incredibly important to justice in our county, so I really need to understand that.

MS. SPAHR:

Can I say that one of the things that we rely on -- and again, the board is not making the determinations about these FOIL requests or the FOIL appeals -- but in talking about them and continuing to be apprised of the status of the applications that are pending, the one thing that we continually rely is the fact that -- I mean, we're all -- there's a bunch of lawyers in this room. We're all expressing legal opinions, different legal theories, different guesses. Lots of us have made a living expressing different valid legal opinions. We rely on the courts to make determinations and the FOIL law is very robust. As I indicated, we use the FOIL law a lot on the Board of Ethics to obtain documents. The media uses the FOIL law a lot to obtain documents. They go to court a lot. Newsday goes to court a lot to reverse FOIL denials.

I don't understand why we're here. Maybe I shouldn't be saying this on behalf of the board. Maybe this is my own perplexity here. I don't understand why. If legal -- if good, honest, well-intended legal minds can disagree, then why was not the legal system utilized to just appeal this and a court could have decided if those documents could have just been redacted?

LEG. HAHN:

Our counsel wants to interrupt, but I do want to not forget that point. Our counsel wants to interrupt, but I'm going to say we do have an oversight responsibility, and I'll take that up later.

MR. NOLAN:

I think some of the confusion among legislators and myself is our law is pretty clear that the statements are available for public inspection, period. There are no exceptions for law enforcement personnel or anyone like this, and I don't think the legislature really wants people to have to go to court to get these statements. There's a very strong presumption here. I think every legislator assumed that these statements were available for public inspection and maybe even that a FOIL analysis would not be done on these statements, that they were just available, period. So I think that's kind of the confusion among the legislators. And the idea about having Newsday go to court, well, that's fine, but they have the resources to do it. A regular citizen may not have the ability to do that, to pay a lawyer to bring an Article 78 proceeding, so I think that's the legislature's feeling, and I think that's what we're trying to communicate to the board.

MS. SPAHR:

And that's such a good point, and that's so within your purview to change the laws.

LEG. HAHN:

I think the law is pretty clear. Not being an attorney, part of my question was going to be help me understand your interpretation of section A-37, because it sounds like you're only required to hold as confidential documents that you've got as part of your investigation. You did not receive the financial disclosure form as part of an investigation. You received it as part of a requirement of a mandatory list of individuals who must file a financial disclosure for the purpose of public access. That's how you received that document, not as part of an investigation.

MR. GROSS:

If I may, and I think perhaps the point that Mr. Nolan made and the point that has been made today underscores the necessity for the legislature to take a look at the statute and perhaps under the confident exempt from the confidentiality provisions, the release of FDS that the confidentiality provisions would not apply to a public release of anybody's FDS, if you so choose, or redacted. And I think also there's a confusion between -- and again, our recommendation of extirpating the FOIL function from the commission -- from the board, there's a confusion between determinations made by the FOIL officer and the application of the confidentiality provision and, what Mr. Nolan points out, the language of the statute that says FDSs shall be released. Those are two different statutes. So I think that also from a legislative perspective and a curative, amendment, perhaps, to the statute, would be to identify to the board you want the FDSs released, period. The confidentiality provision that we've applied, which is very strict -- you can go to jail -- doesn't apply.

CHAIRWOMAN FLEMING:

I respect what you do and I have to just say that I do not think this circumstance necessarily requires a change of the law, although I think we could definitely look at that, I am not convinced that this was a proper exercise of -- proper reliance upon the confidentiality statute. I am not convinced of that. So I just don't want us to think that this is only a discussion of, you know, we need to fix this law. I don't think the law enforcement exception applies, and I don't think that the investigation, such as it was, was over. I just want to make that clear. And I'm sorry to interrupt but just so you understand, Mr. Gross, even though I said one of our inquiries is to how we can improve this law, I don't think that the law as written necessarily leads to the conclusions that denied access to this public record.

MR. GROSS:

I respectfully disagree.

CHAIRWOMAN FLEMING:

I understand that.

MR. HALVERSON:

I would too as a member of the board, because I think when that law was passed, maybe three months after the new board was set up, it was very clear that it was set up to avoid the kind of situations that had previously occurred, and so I think all the board members are very concerned about the threat of fine or imprisonment for releasing information in an unauthorized way. And and I think it's easy to say, *Oh, ignore that part of the law and don't consider it in your deliberations*, but it's not something that we, in good conscience or self-interest, could do.

CHAIRWOMAN FLEMING:

I appreciate that point, but, Kara, you were questioning.

MR. GROSS:

Legislator Hahn, I did have one other point in response to your question. Again, because of the confusion of the FOIL statute which relates to the exemption for law enforcement, et cetera, and the terms of the statute; remember, as the chair pointed out, there are two functions relative to FDS. One is clerking, recording it, and holding onto it; the other is auditing it. And you have placed trust in the persons that have been appointed to do an appropriate audit of the FDS forms, to make determinations whether conflicts exists.

CHAIRWOMAN FLEMING:

We need you to talk into the mike, please.

MR. GROSS:

I'm very sorry. And we have -- the board does that routinely, and the board has the authority to self-initiate complaints after they review an FDS if they find a conflict to exist. So there is an active, appropriate review of FDSs by the board that you've entrusted with this responsibility.

*(*The following was taken and transcribed by
Lucia Braaten - Court Stenographer*)*

LEG. HAHN:

Okay. When Counsel not so rudely interrupted --

(Laughter)

-- you were asking why we're here, and I think he -- you know, he explained one half of that piece, but the other half of that piece is that it is up to us to be oversight of all departments within the County. And so I want to now turn back to the case at hand, to the extent that we can, and I want to -- I want you to just explain what you may have said previously in too many words for everyone here to fully grasp, or too quickly. Did you -- first, did you say that you did investigate the question of -- I hope you can answer this -- the Bureau Chief in the DA's Office renting his boat to criminal defense attorneys operating in Suffolk County Courts?

MS. SPAHR:

No, we did not say that.

LEG. HAHN:

So you did not investigate that matter, or you're not allowed to answer that?

MR. GROSS:

I'm concerned. I'm concerned about the existing Temporary Restraining Order. And might I also say, those -- the documents are before the Judge right now and he may indeed release them in a redacted format.

LEG. HAHN:

Did you say that you concluded your review of the County Executive's request for an investigation?

MS. SPAHR:

We concluded our review, period.

LEG. HAHN:

When you conclude reviews, do you -- I think this was asked, but I don't remember the answer. Are there findings that are public?

MR. GROSS:

If it's a formal complaint, yes, but this was not a formal complaint.

LEG. HAHN:

Okay. So the text of the complaint requested an investigation. How does -- how does one file a formal -- a formal complaint?

MS. SEGAL:

Is this turned on?

LEG. HAHN:

You have to hold the button so the light's on.

MS. SEGAL:

Okay. The Suffolk County Board of Ethics, we have -- our complaints forms are available online. They are distributed at all of our trainings. The staff is precluded by law from assisting anyone from -- assisting them in writing a complaint against a public servant, that is in the law. So if someone were to call me and ask if I can assist them in writing a complaint, I am prohibited by law. I can only advise as to procedure.

If a complaint is filed with the Suffolk County Board of Ethics, it is submitted to the Board at the next regularly scheduled meeting. It is presented to the Board to determine if they want to proceed, if they have jurisdiction on the matter, first and foremost. If they have jurisdiction and they determine that they want to proceed with the fact-finding, it's commenced by majority vote in the Board, and then under Board authority, I am directed to do a fact-finding. At that point in time, once that information comes back in, whether it be by a FOIL, by review of public records, review of newspaper articles, anything that's available to the public, at that point it's an informal investigative line of fact-finding. If the Board, upon presentation, upon -- of the evidence coming in, or fact-finding that they have directed to occur by myself, it's presented to the Board. They then determine at that point in time if they want to commence a formal investigation of any type, and then they proceed with those lines. And that is in our procedural book that we can leave with you.

LEG. HAHN:

So you're saying that because the County Executive wrote a letter that said, "I am requesting an investigation," that did not meet the formal filing of a complaint, because they needed to fill out the form. Did you let them know that if you're requesting a formal investigation, that they needed to fill out the complaint form?

MS. SEGAL:

Every elected official in this County has gone through the training with respect to how to file a complaint, if necessary.

LEG. HAHN:

Okay. So you didn't feel it was necessary to reply to the letter and say in order -- like a standard response, you know, we cannot file -- this is -- "your letter does not constitute a formal complaint, you must file," you know, "the form"?

MS. SEGAL:

Like I said, anyone who calls our office with any type of information with respect to referrals, information, anything that they want to convey to the Board, they are apprised of where the forms are located online. They have options in terms of what they want to submit. But anything that is submitted to the Board in any -- the Board in any format is presented to the Board in the format that it is received, and the Board has the right to self-initiate a complaint if they feel that it rises to reasonable cause to proceed.

LEG. HAHN:

And you said earlier that you did not self-initiate on this matter?

MR. GROSS:

Correct.

CHAIRPERSON FLEMING:

But one of the bases for denying their disclosure request was that you had an investigation of a complaint underway.

MR. GROSS:

It was.

CHAIRPERSON FLEMING:

You can't have it both ways.

MS. SEGAL:

The matter was --

MR. GROSS:

I pointed out to you before, we tried to broadly interpret the word "investigate" to give you the document you asked for under the two-thirds vote. That was interpreted to include this informal review.

MS. SEGAL:

And just so it's clear, in terms of -- and it may be clearer once you have an opportunity to look at the Board's procedures. There are, again, informal investigations and formal investigations. The procedure set forth that upon conclusion of an informal investigation, the Board can convert it to a formal investigation and proceed. While we're in the fact-finding process, or evidentiary gathering process, or any type of inquiries that are being posed to get to that point, that -- I mean, that information is certainly deemed confidential by the staff. We wouldn't be looking to turn that information over.

LEG. HAHN:

Well, of course. Of course, of course, but --

MS. SPAHR:

May I?

LEG. HAHN:

Okay.

MS. SPAHR:

I'm sorry. May I add to that, because you're talking about what triggers the process, the procedures. For the filing of a former complaint -- of a formal complaint, and that complaint form is contained in the Ethics booklet that we distribute to all employees, including Mr. Bellone, and all of you who have attended the training, it requires a statement of facts, not just a letter referring to third-hand information, but a statement of facts and an acknowledgment that making a false statement is punishable as a misdemeanor. So it's a formal beginning of a legal process. So that legal process that would trigger a formal hearing, a formal investigation, and a notice of violation before a hearing could be commenced or subpoenas could be issued, all of that starts with someone filing a formal complaint. We try --

CHAIRPERSON FLEMING:

Okay. But I just need to understand.

MS. SPAHR:

Yes.

CHAIRPERSON FLEMING:

I just need to understand, because we really got to get some of this stuff clear, because I have to say, I think you may have heard already that I may disagree with you with regard to the balance that you're striking that, Ms. Spahr, you mentioned at the beginning of your comments, that we have to balance the public's right to this information with other considerations. We, as the Legislature, I think as Legislator Hahn pointed out, have an oversight function with regard to the public's right to know these financial disclosure statements.

So my question is, are you relying on the confidentiality that's triggered by an ongoing investigation, but not considering it an ongoing investigation that requires you to make any findings or proceed with any kind of formal process? You're relying on it for one, to not disclose, but then you're saying it doesn't trigger any of the formal proceedings or even the notice of the findings that an ongoing investigation would require or trigger.

MS. SPAHR:

For the -- and I'm going to say, Counsel, correct me if I'm describing this wrong. For the purposes of the first set of reasons that were described in the appeal denial, I believe that that was because the materials were under review, and that would have been an informal investigation. For the purposes of the second part of the denial, that would be the section that Ms. Segal was talking about, would have to be continued to be reviewed on a second -- if there were another FOIL application for them. So, yes, there's a review that was taking place that triggered the first part of the denial letter.

CHAIRPERSON FLEMING:

Okay. Just so you're clear, I think the first --

MS. SPAHR:

But it was not a form --

CHAIRPERSON FLEMING:

The first reason noted in the denial letter is this Federal exemption, which --

MS. SEGAL:

I'm just so -- I just want to clear, you know --

MS. SPAHR:

Okay. I'm saying first and second, I'm not looking at the --

CHAIRPERSON FLEMING:

I understand. But what you're saying, basically, is you are relying on the confidentiality provision that attaches to an ongoing review, but you are not considering that there was an investigation underway based on a complaint that would trigger a formal process?

MS. SPAHR:

Correct.

CHAIRPERSON FLEMING:

Thank you. Sorry, Kara.

LEG. HAHN:

Okay. I certainly feel like there's lots of circling and circuitous reasoning going on here --

CHAIRPERSON FLEMING:

Yes, there is.

LEG. HAHN:

-- that is -- the heart of the matter here for me, I think, and for us is we have -- and I'm sorry that I'm going to touch on what should not be said, but, you know, we have a newspaper article talking about a Bureau Chief in the District Attorney's Office renting his boat to criminal defense attorneys, and we have the Ethics Board being asked to look at that, and it sounds like we're saying that that's not a violation of the Ethics Code. Would that be a -- if that scenario were true, would that be a violation of the Ethics Code?

MS. SPAHR:

You know, it's such an interesting question, because I did read that article, whenever it came out, and if I recall correctly, it was talking about something that may or may not have happened prior to 2010, when we didn't exist, and the existing Ethics Code that we have jurisdiction over didn't exist. And there was another -- there was a Commission, there wasn't a Board. And so, yeah, it is all very confusing.

CHAIRPERSON FLEMING:

But you're --

MS. SEGAL:

And that goes to the assessment of jurisdiction, obviously, is why the Chair is bringing that up.

MR. GROSS:

Relative to the -- and I think the Chair correctly characterized what was done with the County Executive's document. There's a significant question as to retrospect of jurisdiction of this institution, the Suffolk County Board of Ethics, over something that occurred many years prior thereto.

CHAIRPERSON FLEMING:

I guess my -- what I needed clarified, and I guess you have, is that there was no formal proceeding with regard to the investigation of the County Executive's concerns.

MR. GROSS:

Correct, but --

CHAIRPERSON FLEMING:

Okay. But --

MR. GROSS:

It was looked at.

CHAIRPERSON FLEMING:

-- at some point they were being reviewed, if you'll excuse the air quotes, which would preclude their being disclosed to the public.

MR. GROSS:

Absolutely. And this is the County Executive sending an important letter that my client did not disregard. So they obviously looked at it, reviewed it, and came to an ultimate conclusion.

MS. SPAHR:

To the extent that we felt that we had jurisdiction.

CHAIRPERSON FLEMING:

Understood. But there are no findings issued. I mean, there was nothing -- there was no -- there was no conclusion articulated with regard to even that jurisdictional question, much less the facts of the allegations. There was -- I mean, he's been noticed that it was closed, that was it, is I thought what you said.

MR. GROSS:

There was a letter sent by my office to the County Executive indicating that it had been reviewed and no further action would be taken.

CHAIRPERSON FLEMING:

But there were no specifics with regard to facts, or jurisdiction, or timelines?

MR. GROSS:

No.

MS. SPAHR:

No, but --

CHAIRPERSON FLEMING:

I'm sorry, Kara, go ahead.

LEG. HAHN:

Can we request that?

MR. GROSS:

The letter, sure.

MS. SPAHR:

Sure.

MS. SEGAL:

That was my next statement, which is, obviously, as an Oversight Committee, any request that you would send over, whether it be on past reviews, past investigations, current investigations that are currently active in the County with records that are in place that have been in our public record,

anything with respect to current investigations pending with the Board or former investigations or reviews.

Also, just with respect to -- I know Chair Fleming had mentioned with respect to law enforcement. The law enforcement definition is not something that we created at the Board of Ethics. The Suffolk County Code at 971 defines Assistant District Attorneys as law enforcement. There is a FOIL exemption for them with respect to home addresses not being released.

So in constructing the -- any type of an assessment of categorical filers, we don't look to recreate them. We do rely heavily on the Legislature's prior intention and concern with law enforcement, including Assistant District Attorneys who are in the code for a FOIL exemption for home addresses that were inadvertently, I guess, released at prior times. So, in reviewing that, we always go back to if there's something first at County level that we should look at and consider and then expand upon it in adopting Board policies.

LEG. HAHN:

You mentioned jurisdiction. When you feel like something falls in -- that is not in your jurisdiction, do you then pass it along to other appropriate review or investigatory agencies?

MS. SEGAL:

I can tell you that there have been times in my capacity as Executive Director of the Suffolk County Board of Ethics that I have called Federal Law Enforcement at times that was not in our authority, so I personally do. The Board also does send referrals at times directly on matters that they feel need regulatory or prosecutorial review, and it is -- we do have protocols for referrals.

LEG. HAHN:

Are you able to confirm or tell us if this particular instance was passed along for further review by another appropriate agency?

MS. SEGAL:

I'm going to defer to Counsel, obviously, because that's Board activity.

MR. GROSS:

Can we get back to you on that?

LEG. HAHN:

Thank you.

MR. GROSS:

I'm concerned, again, about the confidentiality issue.

LEG. HAHN:

I do -- I do hope that we'll be keeping track of all the things you're getting back to us on, because this -- you know, this is -- this just goes to the heart of justice in our County and making sure that we all feel it is happening, and --

MS. SEGAL:

And, again, since our jurisdiction is limited in terms of only reviewing the County Conflicts of Interest Code, this two-thirds vote provision that Counsel did highlight a few weeks back certainly, again, does apply to active investigation, former investigations. And if any point time, obviously, the Legislature wants to look at and see if there's additional public -- public outreach that's needed or referrals, I mean, that is the point of the provision of the law, because we are limited, and, obviously, we don't want to have a chilling effect on the County.

I mean, I've had in my capacity hundreds of people, including elected officials, call to voice concerns that have turned into very full investigations with the County, findings of conflicts of interest, final determinations that have been issued that are in our subject matter index that can be requested at times. So we certainly -- I don't want to breach my confidentiality and trust that I've built in the County, because it does result in a tremendous amount of conflicts of interest review and remediation.

The Board of Ethics does at times, when it is an employee of the County, they do make sure that the County Department Head is aware of a conflict of interest that's in place, that the County Law Department is CC'd on that in the event any type of employment matter is commenced against the employee. And we make sure that individuals who can actually remediate the problem at the Department level are notified. And obviously, though, because the trust is required for us to be able to do our work, we obviously don't liaison the information unilaterally because of this confidentiality law. But if the requests come in from the Legislature as oversight, we'll comply.

LEG. HAHN:

Okay, good. There's just a ton of concerns here. One thing, you know, that really stunned me, you know, in the -- sort of towards the beginning of your presentation was the fact that the Department Heads could remove individuals from the list. I've already requested from Counsel that we change that. The Legislature should have input into those lists, and, you know, should have to approve or deny if someone's to be removed. So I'm sure there will be other actions as a result of today.

This has been very informative, very confusing and frustrating as well, but there have been, you know, a tremendous number, I think, of ideas for improvement. And are you able to approach us? Or I guess that's your report, your annual report where you make recommendations for approval on?

MS. SEGAL:

If we -- the way the General Municipal Law reads, that the County Ethics Boards can propose or provide additional information only upon request of the -- of the Legislative entity who's oversighting, if you want specific feedback on specific areas. So upon that request, we will then be able to provide it to you. And I can tell you that a lot of the local towns in Suffolk County, as well as a lot of the State agencies, do specifically enumerate the titles in Civil Service that have to disclose, and we don't have a title disclosure list in Suffolk County.

MR. GROSS:

And the Board did recommend a modification of that delisting procedure and that the Legislature spell out in the statute who has to file --

LEG. HAHN:

Yeah. I think that --

MR. GROSS:

-- prior to today.

LEG. HAHN:

-- I've requested that, so I hope that we will act on that.

MR. GROSS:

We would support that.

LEG. HAHN:

Okay.

MS. SPAHR:

We would also be able to provide -- I mean, Samantha's done a lot of research on our behalf in terms of how other jurisdictions identify who required filers should be. We've had extensive communication with Department Heads trying to kind of suss out who the filers should be.

CHAIRPERSON FLEMING:

Great. Legislator Trotta.

LEG. TROTТА:

If the County Executive would have filled out the form, would it have been handled any differently?

MS. SEGAL:

In terms of presenting it to the Board or Board activity?

LEG. TROTТА:

If the County Executive would have filled out the form, would it have been handled any differently?

MR. GROSS:

Well, I think there are a number of questions that were raised, one of which was jurisdiction, which we've already indicated, because a lot of the allegation -- all the allegations made by the County Executive occurred well before the creation of the Board, and there's no provision in the statute that says we can apply retrospective jurisdiction. Secondly --

LEG. TROTТА:

Is that yes or no? Would it have been handled differently?

MR. GROSS:

Would it have been handled differently? Probably would have been more formal. We would have gotten involved a lot sooner.

LEG. TROTТА:

Okay. So --

MS. SPAHR:

Yeah, just -- if you can just give a second, because there's triggers.

MS. SEGAL:

I don't want to -- I just don't want to misquote the procedure, so if you could hold.

MR. GROSS:

There's an extensive procedure when an official complaint is filed, yes.

LEG. TROTТА:

And you don't consider a letter from the County Executive an official complaint?

MR. GROSS:

The Board considered it important enough to review it. It was not an official, it was not a filing. When -- you know, part of the -- again, the balance of privacy versus in the interest of the employee or the individual versus the question of investigation, is that the person making the allegation affirm it in an official document under the penalties of perjury, and that was not done in this case.

LEG. TROTTA:

Well --

MR. GROSS:

And had that been --

LEG. TROTTA:

I think a forward policy is that when someone writes a letter, they're notified, and says, "Hey, listen, you have to do it this way."

MR. GROSS:

If the Legislature wants to amend the statute that we act on letters received, sure.

MS. SEGAL:

Could I also address Legislator Trotta's procedural question, though?

CHAIRPERSON FLEMING:

Yes. And do you have a copy of that letter that we can take a look at, the letter from the County Executive?

MR. GROSS:

I don't have it with me. Do you have it?

MS. SEGAL:

I wouldn't have brought it, because it's --

CHAIRPERSON FLEMING:

Okay, because I think that's important to get for the record.

MR. GROSS:

No. We'll supply that with the other.

CHAIRPERSON FLEMING:

Thank you. Yes. I'm sorry, go ahead, Samantha.

MS. SEGAL:

Okay. In addressing Legislator Trotta in terms of the Ethics violation complaint procedure --

LEG. TROTTA:

I'm not -- I'm just asking would it have been handled differently, yes or no?

MS. SEGAL:

But this would address it. But this is -- this does address it, because it addresses it twofold.

LEG. TROTTA:

I just want yes or no, that's all.

MR. GROSS:

I don't think the answer --

MS. SEGAL:

I don't think it's a yes or no question, though.

MR. GROSS:

-- the question is answerable by a yes or no.

CHAIRPERSON FLEMING:

I think it is. Would it have been handled differently?

MS. SEGAL:

Yes.

LEG. TROTТА:

Okay. Now, when you get a financial disclosure form, the standard procedure is to look at it, review it, file it, and make sure everything is filled out correctly. If it's not, there's a mistake, you call the guy up and you -- okay. Because it says that, you know, in the financial disclosures, the Board shall review, maintain these statements, and otherwise administer, blah, blah, blah. And then in the confidentiality, it says, as Legislator Hahn so ineptly pointed out, it says, "Articles, testimony received, or any other information obtained by a member of the Board in relation to this complaint." It doesn't say that the financial disclosure form doesn't get handed out. Now you force it, they'll argue very, very good on one side, but I'm sure you could do the other side just as well, whereas this, it should be -- it's blatantly clear to me that this should have been given out, and it doesn't fit the criteria of anything else, like the guy's complaint or testimony.

And furthermore, and most importantly, is in your letter in response to the Newsday's -- you say, "A request for record is currently under review." Well, we just said that every one you get is under review. It doesn't say that preparation is advisory committee or an investigation, it doesn't say that at all. You didn't use the words in this confidentiality agreement that actually point to it. You used the word "review", which you just admitted to me and everyone, and in your document says everyone is under review.

So, you know, this gives the public the perception that we're -- and I'm not saying you are, but I'm saying it gives the public perception that something's being hidden, something's being covered up. I'm not saying it is, it's probably not, but this is horrible.

MR. GROSS:

Legislator, perhaps --

LEG. TROTТА:

I'm not even close to being done.

MR. GROSS:

Well, if I may, in response to what you had to say, perhaps you should introduce an amendment to the statute, A, that we investigate --

LEG. TROTТА:

This is -- you're trying to blame us for something.

MR. GROSS:

No, I'm not.

LEG. TROTТА:

It's blatantly clear in here to me --

MR. GROSS:

It is the job of the Suffolk County Board of Ethics to abide by the statute you created and to interpret it. If you disagree with that interpretation --

LEG. TROTTA:

It doesn't say in here that you don't give it -- it only says in here that the testimony received, or like basically the complaint from someone isn't given out, but it doesn't say the financial disclosure is not. That's point one.

Point two is the other thing about the law enforcement, you know, I don't want the public and people to think that cops fill these out, because they don't. It's only high ranking Bureau Chiefs, or whatever. I've read these cases and I had lawyers read these cases. Not one of them refers to a financial disclosure form. They've -- they're about testimony that's -- you know, whether it be a statement from a defendant or a statement of something that happened in a criminal case. It has nothing to do with this. So it's disingenuous to put this in here and give this to Newsday. You know, Newsday has got, you know, a beef, and what Newsday does it looks -- tells the public what's going on. And my own counsel said this is ridiculous, and then everyone else who reviewed it said it's ridiculous.

MR. GROSS:

Well, we're going to have --

LEG. TROTTA:

So to put this in in the first page, the first reason is a horrible thing to do to the public and to Newsday.

CHAIRPERSON FLEMING:

Let me just interrupt for one second. I appreciate your passion, Rob. And I do want to just clarify one thing. I've heard you again, Mr. Gross, say, "If you think the decision was wrong, you need to amend the statute." That is not necessarily clear. Another -- another purpose of this hearing and the oversight role of the Legislature is to, first of all, protect, you know, members of the Board in a way by articulating that that is not the Legislative intent, but also to lend guidance to the Board that, you know, when you're striking this balance between public disclosure and other considerations, particularly in a situation that's getting Mr. Trotta so upset, that Legislator Hahn also alluded to, that we have a very senior person in the District Attorney's Office under a cloud at the moment because of publically disclosed allegations.

The paramount interest of public disclosure has to be brought to bear in the balance that you strike, and I think you're hearing that from the questioning. And I do hope that you take that with you as something that's important to us as a Legislature, that it's not just that this statute has to be changed. But I interrupted.

LEG. TROTTA:

And you're right, you're exactly right. You're hitting the nail -- this is how Jimmy Burke continued for years, because the lack of transparency that's going on in this County, whether it be from you or anybody else, is horrible.

CHAIRPERSON FLEMING:

Mr. Trotta, I do need to confine you to the agenda. We have a limited agenda here, and we have people here who have a conscientious approach to this, so just --

MR. GROSS:

Madam Chair, may I please just make one brief statement?

CHAIRPERSON FLEMING:

Well, I hope it's not repetitive of the statement you've already made, that the statute has to be changed --

MR. GROSS:

Well, forgive me, but you have --

CHAIRPERSON FLEMING:

-- because I think I may disagree with you.

MR. GROSS:

We do disagree. My point is that we're conflating the FOIL statute with the confidentiality statute. We were prepared today to propose -- forgive me -- to give you the document you sought. We were ready to do that upon the two-thirds vote which absolved the confidentiality issue.

CHAIRPERSON FLEMING:

I appreciate that, but I do need to emphasize something that I think Rob has said very clearly. It is not -- it's not -- our Counsel and the Legislative body that you sit in front of does not agree with the underlying reasoning for your first -- for your first exemption. From Miss -- from the letter to Mr. Schwartz from Newsday, the second full paragraph, the end of the paragraph says, basically, that if you're employed by the Suffolk County District Attorney's Office, that precludes production of your financial disclosure form. We can't let you walk out of this room thinking that that is a basis upon which to deny public viewing of very, very important information, especially when the office is under a cloud. I just can't emphasize that enough.

MS. SEGAL:

And just so I'm clear, I need to speak to, then, my additional analysis on that.

Number one, when -- Chairwoman Fleming, when you stepped out, I did clarify with Legislator Hahn that my interpretation of what the definition of law enforcement agents is in Suffolk County is based out of Suffolk County Code 971 that specifically states Assistant District Attorneys are categorized as law enforcement agents, and there is a FOIL exemption for them with respect to home addresses that are not allowed to be released, and obviously can be redacted from the documented.

CHAIRPERSON FLEMING:

Absolutely, you redact the document and you release them.

MS. SEGAL:

Absolutely.

CHAIRPERSON FLEMING:

I was a D.A. for ten years.

MS. SEGAL:

So in starting from parameters of categorically assessing an individual, I always go to County Code to see if there's anything that the Legislator has already put as heightened or sensitized. And, obviously, in this situation, as ADAs are listed in there as law enforcement agents, that should be reviewed under FOIL exemptions, that was obviously a starting point in this analysis. Additionally, in --

CHAIRPERSON FLEMING:

And there was no claim by this filer -- I think we've already discussed that. There was no request by the filer that any information be --

MS. SEGAL:

There was no testimony for that.

MS. SPAHR:

That was not discussed.

MS. SEGAL:

There was no testimony of that today.

CHAIRPERSON FLEMING:

You did say that.

MS. SEGAL:

No. We said there was no -- there was no testimony to that today.

CHAIRPERSON FLEMING:

Was there a request by this filer?

MS. SPAHR:

We can't discuss the documents today.

LEG. TROTТА:

I want to just --

CHAIRPERSON FLEMING:

Sorry.

MS. SPAHR:

They're under the Temporary Restraining Order.

MS. SEGAL:

And just in terms of the internal research and review that could have been conducted with respect to that, just so it's clear, you know, in assessing this type of review, I did speak with the Attorney Advisor to the United States Department of Justice with respect to Federal exemptions and advised that when they do record releases in their office, not necessarily just with respect to criminal investigation, but record releases, that they do assess whether or not the record, regardless of the record, has a potential financial career harm, potential impact on the family, or physical harm by release of the document. If, in fact, there's a potential financial career harm or physical harm at the time of request, then the document itself is not released.

Additionally, I did speak with the Executive Director in New York City, Wayne Hawley, to see how they handled their prosecutors forms, to which he deferred me to his Director of FDS, of which time I was advised that at times prosecutor's FDS statements are withheld, as well as licensed firearm individuals in the City of New York, so they do not ever produce a record that could lead someone to the existence of a firearm. I additionally spoke with --

CHAIRPERSON FLEMING:

I'm sorry, I'm sorry. What in a financial disclosure form in Suffolk County would lead to the existence of a firearm?

MS. SEGAL:

I'm giving you my analysis.

CHAIRPERSON FLEMING:

Just hypothetically speaking.

LEG. TROTTA:

Why wouldn't it have the address?

MS. SEGAL:

That's why the addresses are redacted.

CHAIRPERSON FLEMING:

Right. But we've already -- we've already -- I mean, I don't know we need to go over and over. We know that you can redact the address. As a matter of fact, I would urge and insist that you redact addresses of law enforcement officials, home addresses, absolutely. But what else is there, then?

MS. SEGAL:

Additionally, in this specific analysis, I spoke with the Attorney Advisor to the U.S. Office of Government Ethics with respect to the preclusion of records that could pose potential safety risks. And, again, I was obviously deferred to the types of opinion that John Gross highlighted today with respect to any type of privacy that could be in play with a law enforcement risk. So in terms of assessing it, it is not -- I do not limit the research to, you know, the experience of only Suffolk County, Nassau County, Queens County. I do reach out to see, in terms of any type of new categorical assessment, what other jurisdictions do review in producing records of any type.

CHAIRPERSON FLEMING:

Go ahead, Rob.

LEG. TROTTA:

I just want to get back to the nuance of this confidentiality. It says, "Except otherwise provided by this article, testimony received or any other information obtained by a member of the Board or staff of the Board in connection with, in the preparation of an advisory opinion or the investigation of a complaint or referral." Nowhere does it say the financial disclosure form. It says everything else but the financial disclosure form, that's one.

In your letter to Newsday, you say that it's under review. And in the actual document here, the Board of Ethics, it says they're all under review, you review them when you get them.

MS. SEGAL:

There's clarification.

LEG. TROTTA:

So the words should say in here that it was under investigation or under an advisory opinion, which I'm not even sure you said it was, because it was just a letter.

MR. GROSS:

The letter says active review.

LEG. TROTTA:

Under -- no. It says it's currently under review.

MR. GROSS:

No, no. The caption, doesn't it indicate active review?

MS. SPAHR:

Legislator Trotta.

MR. GROSS:

Active audit. Forgive me, active audit.

MS. SPAHR:

I'm sorry. When you're referring to the document from the Board --

LEG. TROTТА:

But none of the -- but what is it about words? None of those words are in your -- in yours statement. None of the words for the confidentiality are in the letter to Newsday citing the reason for denial. So you take that out and you take out the -- you know, the -- what I call trumped up law enforcement, you know, things that are -- have absolutely no relation to this at all, you know, this is -- this is what is -- you know, it gives -- it takes the confidence away from the public. I mean, Newsday, you know, based upon your own admission, if they were to -- if they were to apply for it today, would they get it?

MR. GROSS:

No.

MS. SPAHR:

An analysis won't be --

MS. SEGAL:

Now they're in the -- it's in the court.

LEG. TROTТА:

Let's go last week.

MR. GROSS:

There would be a new analysis, sir.

LEG. TROTТА:

Okay. And this, the -- well, I don't know if it's -- is it a review, is it an investigation? That's all over, so now you would have to fall back on the law enforcement exemption.

MR. GROSS:

It would be taken under advisement. Whatever Newsday's counsel had to say, we'd put that --

LEG. TROTТА:

I mean, it makes the appearance that you're protecting secrecy and that's wrong.

MS. SPAHR:

That's unfortunate.

LEG. TROTТА:

That's wrong.

MS. SEGAL:

Well, that's unfortunate, because --

LEG. TROTTA:

And that degrades the public's confidence in the entire system, and that's really bad.

MR. GROSS:

That's not what my client did.

MS. SPAHR:

No.

MS. SEGAL:

And, quite frankly, with respect to the actual FOIL production, mechanisms of the office, FOIL productions and record productions are supposed to constitute 3 to 5% of the work product of the office. If the --

LEG. TROTTA:

I'm not --

MS. SEGAL:

No, no. But what I'm saying is if 97% of the work product --

LEG. TROTTA:

I'm talking about public perception. The reality means nothing. The public perception of it is horrible, horrible.

CHAIRPERSON FLEMING:

Mr. Trotta, please allow them --

LEG. TROTTA:

That's my question. I have more questions.

CHAIRPERSON FLEMING:

Could you please -- but Samantha was not finished answering the question. Go ahead and finish your response. Were you going to ask?

MS. SEGAL:

What I was going to add is that the other 97% of the work product of the office is not FOIL productions and it is not --

LEG. TROTTA:

I'm not saying that.

CHAIRPERSON FLEMING:

Rob. Rob, you have to let her finish.

MS. SEGAL:

So in the event of public perception in terms of final Board determinations, our office has always taken a very conservative approach of not fettering out Board sanctions and Board investigations to the press unless an inquiry has come in. In the event an inquiry comes in where they want final determinations of this Board, they will be released to the press. But our office, so we can maintain our confidentiality and trust with the County, we do not put out press releases saying what our findings are.

LEG. TROTTA:

I'm not saying that.

MS. SEGAL:

We certainly could if you think that that would be better for public perception.

LEG. TROTТА:

I'm not saying that at all. I'm saying that this instance, you have someone that's on Newsday. This should have been given out. There's nothing in here that says it shouldn't have. You just use legal mumbo jumbo to hide it, and the fact that you're hiding it is horrible.

CHAIRPERSON FLEMING:

Rob, do you have a question?

LEG. TROTТА:

Yes, I do, because I know they had done nothing wrong and now we're dragging them through this whole thing.

CHAIRPERSON FLEMING:

Okay, but questions, not speeches.

LEG. TROTТА:

I have one more question. You never answered the question. Did you refer this to anybody else? Once you reviewed or whatever that you did, did you refer this to another law enforcement agency?

MR. GROSS:

We did not.

MS. SPAHR:

We did not.

LEG. TROTТА:

You didn't refer it to any law enforcement agency. Okay, great. Thank you.

CHAIRPERSON FLEMING:

I think it might be helpful to have that letter. The letter -- could you just say like a date that you sent a letter saying the investigation was concluded, and to whom that letter was addressed? If you have a copy with you, that would be very helpful. Okay.

MS. SEGAL:

Just so we're clear, since the procedural vote did not ask for underlying investigative materials, those materials were not brought today. The only thing that we had prepared for production was in compliance to that procedural motion, which was the documents only.

CHAIRPERSON FLEMING:

Right.

MS. SEGAL:

It didn't request the other accompanying materials.

CHAIRPERSON FLEMING:

Understood. And this is not intended to be an interrogation or a hostile inquiry. We just need to get what's right. But we do need to know what is the date of the --

MR. GROSS:

September 22nd.

CHAIRPERSON FLEMING:

September 27th?

MR. GROSS:

Second.

CHAIRPERSON FLEMING:

Second. A letter saying that the -- that the investigation was concluded?

MR. GROSS:

Yes.

MS. SPAHR:

And I recall, although I haven't looked at the letter since it was determined to send it out, but we specifically referred the County Exec to the website, and where he could find the additional documents for filing with the Board, which included the complaint forms.

CHAIRPERSON FLEMING:

Yeah, we don't have that letter.

D.P.O. CALARCO:

I do not have the letter.

CHAIRPERSON FLEMING:

That was the September 22nd letter? Rob, the letter that you have, is it September 22nd?

D.P.O. CALARCO:

I have one from September 22nd.

MS. SPAHR:

But may I see it? May we see it?

MR. GROSS:

Forgive me, we don't have --

CHAIRPERSON FLEMING:

Is it long? Can you read it?

D.P.O. CALARCO:

I can read it. I have a letter here, dated September 22nd, to the County Executive, via Inter-Office Mail and Email.

"Dear Honorable Bellone:

On September 7th, 2016, Counsel to the SCBE, in response to your request for a "status report", advised you that a substantive confidential matters regarding any SCBE investigation cannot be disclosed until the SCBE statute." "Under the SCBE statute," excuse me.

"Observing this admonition of counsel, the Board, at its regularly scheduled meeting of 9/21/2016, directed this office to send you correspondence that no further action shall be taken at this time

under Suffolk County Code Chapter 77, or under Suffolk County Charter Article XXX, on your above referenced submission.

Please note, this correspondence from the Suffolk County Board of Ethics does not preclude or prejudice you from seeking legal advice or reporting your concerns to any other governing entity.

Kindly note, should you submit your additional information to the Board, the Board forms and procedures for advisory opinions, FOIL, financial disclosure addendums, complaints, and recusals can be requested from the Board's office and are located at the Suffolk County Government website at," and it's their website. And then, "Best regards, Samantha Segal."

CHAIRPERSON FLEMING:

Thank you, Rob. So we'll have that in the record of this proceeding, so that's one thing you don't have to do.

MS. SEGAL:

Sure. And, obviously, you know, in the event that in the future, if you do get third party referrals on our documentation, in the event that you need certified copies from our office that that is the complete record of what was issued, please let us know and certified copies could be provided to you.

CHAIRPERSON FLEMING:

Thank you. You have questions, Mr. Calarco?

D.P.O. CALARCO:

Questions, statements. I got to be honest with you, I'm very frustrated, very disappointed in a sense. I was around here for a while. I may not have been the Legislator at the time that the Board got reconstituted and that legislation was passed. It happened a year before I was elected, but I was around this horseshoe. I remember all of the instances, I've seen all the issues that came about from it. I've seen the DA's own investigation that resulted in some of these -- this reconstitution of the Board. And I'm familiar with the reasons why some of the portions of the law are put in there, because of the problems we had in investigating the prior commission.

And I get the sense from sitting at this table that there's a lot of obfuscation going on here, that there's a lot of attempts to parse the law in a lot of different ways that I don't think was certainly the intention of this body in creating your Board.

I know we talked about this law enforcement issue a number of times. Let me ask you, all of those cases you cited, Mr. Gross, were they issues pertaining to someone's identity?

MR. GROSS:

You're talking about Ms. Segal's letter?

D.P.O. CALARCO:

The letter, yes, where it cites a number of law enforcement exemptions, usually referring in the case matters. Obviously, I've hadn't had a chance to look up each individual case that's been cited, but special prosecutors in specific. Each one of them mentions a special investigator, special prosecutor in the DEA or FBI, and it seems to me that those are probably instances where the person's identity, just their name alone is an important part of keeping confidential because of the persons at risk, probably undercover, whatever the case may be. Obviously, in this instance that we're talking about here, this individual's name is very well known. He's a Bureau Chief. It's not a not common or public information. So in all of those cases you cited, were they issues dealing with disclosing the person's identity?

MR. GROSS:

I think you're not incorrect. It certainly addressed predominantly disclosure. But the reason for the citation of those cases addresses the concern --

D.P.O. CALARCO:

Well, listen --

MR. GROSS:

-- generally about law enforcement.

D.P.O. CALARCO:

-- I'm not an attorney, but I do understand that you cite case law in backing up your opinions so that there's an established reason for those opinions. But if all of the case law you cite is specific to protecting a person's identity, and in this particular situation, a person's identity is not of special protection, then I don't understand the reason for citing those cases.

MR. GROSS:

The reason for citing the cases is because it identifies the special concern regarding law enforcement.

D.P.O. CALARCO:

But those cases are dealing specifically with a person's identity.

MR. GROSS:

I understand your question --

D.P.O. CALARCO:

And in this particular situation, we're not protecting a person's identity. Then how was the case law -- how was that case law relevant to this case?

MR. GROSS:

I think it is relevant because it identifies an overall concern regarding law enforcement.

D.P.O. CALARCO:

Okay. I would --

MR. GROSS:

I understand your --

D.P.O. CALARCO:

-- I guess, disagree with you on that. In the County's section on the Public Inspection of Statements, 77-14 regarding disclosure forms, and I think Counsel made a pretty good point of this, does it say that making those disclosure statements available to the public is done pursuant to FOIL law, or does it say that they're required to be made public to inspection? Do you want me to read the statute?

MS. SEGAL:

No, no, no, no, no.

MR. GROSS:

I can read the statute.

MS. SEGAL:

Are you asking which line FDS's have to be reviewed under, or what, because --

D.P.O. CALARCO:

No, no. The County law, which established the process of filing disclosure forms and how they are going to be made public inspection, and, in fact, it's under the section of law that says "Public Inspection of Statements," states, "Information filed in financial disclosure statements required by this article shall be maintained by the Board, and shall be made available for public inspection upon written request on such form as the Board shall prescribe. The Board shall respond to requests for inspection for financial disclosure statements in an order that they are received from within the time periods prescribed by the New York State Freedom of Information Law."

So it doesn't say that it is subject to the Freedom of Information Law, it just says that we're going to use their time frames as time frames to comply with the law.

MS. SEGAL:

It gives an additional mechanism for requesting it in addition to FOIL. It doesn't supersede. That FOIL, in fact, is applied to FDS, and that's held by the State in many, many situations, FDS statements.

D.P.O. CALARCO:

I think we have made it very clear in our own law that we want these things disclosed.

MS. SEGAL:

No. But that -- obviously, it's an additional layer of disclosure. But financial disclosure statements in New York have been held to be subject to FOIL. So --

D.P.O. CALARCO:

Sure.

MS. SEGAL:

-- that being said, this is an additional mechanism of disclosure. The documents that you're talking about today did not come in under a Local Law request, they came in under a FOIL.

D.P.O. CALARCO:

Okay. So if they --

MS. SEGAL:

Therefore, they have to be analyzed under a FOIL analysis.

D.P.O. CALARCO:

So you're -- so you're telling me that if the -- if, instead of filing the FOIL request, they said, "We want to see these documents," you would have said, "Yeah, sure, come on in"?

MS. SEGAL:

No. We have to go by Board policy, Board policy, which we have presented to the Legislature.

D.P.O. CALARCO:

No, no, no, no, no. I'm going to have a real exception to that one, because you have made it very clear that you are abiding by the letter of this law.

MS. SEGAL:

And the letter of the law is --

D.P.O. CALARCO:

It is my responsibility to set policy.

MS. SEGAL:

No. But the -- well, absolutely. And if, in fact, the policies that were passed in 2014, underneath the Board's authority to promulgate rules and regulations to enforce and regulate this law --

D.P.O. CALARCO:

Does it say in the law -- where in the law does it say that the Board has a policy ability to deny people to see the forms?

MR. GROSS:

Under the confidentiality section.

D.P.O. CALARCO:

No, no, no, no. You can't cite the confidentiality section.

MR. GROSS:

You can't force my answer on giving you the answer that we were concerned about the confidentiality section.

D.P.O. CALARCO:

I will actually give you that because you had a review going on, although I'm going to get to that in a minute, but because you had a review going on, that you had a legitimate -- I'm going to cede that point. You had a legitimate reason to believe that these forms under that section, because you were doing a review that was requested, became subject to that provision. I'll give you that, but that's not what I'm asking in general. I'm asking where do we give the Board the policy decision to decide whether or not -- when or when not to describe -- provide these disclosures, in general?

MR. GROSS:

Because you have a provision that prohibits release of confidential information.

D.P.O. CALARCO:

So you have said you've had three instances where you denied FOIL requests?

MR. GROSS:

Yes, sir.

MS. SEGAL:

Three.

D.P.O. CALARCO:

What were the other two?

MS. SEGAL:

The other two was with -- there was another Newsday FOIL --

D.P.O. CALARCO:

Okay.

MS. SEGAL:

-- on this subject matter, the same subject matter. And then there was one, I believe it was the

end of 2014.

D.P.O. CALARCO:

On the same subject matter, meaning it was the same disclosure form, and it was the same reason for denials?

MS. SEGAL:

Correct. It was an identical, it was an identical request.

MR. GROSS:

A second reporter.

D.P.O. CALARCO:

Two different reporters filed the same --

MS. SEGAL:

Right, that's correct.

D.P.O. CALARCO:

Boy, they're on this story pretty hard. Okay. So --

MS. SEGAL:

One was counsel represented --

D.P.O. CALARCO:

What was the third instance, then?

MS. SEGAL:

The third instance was an individual would had submitted material to the Board that went to the Board for review, and that's the only reason. It was also under review at the time. It was a matter that was submitted to the Board, and then a FOIL came in requesting information.

MR. GROSS:

We're uncomfortable getting into the particulars of the other case.

MS. SEGAL:

That being said, the denial letters are subject to FOIL --

D.P.O. CALARCO:

Is the other case still active?

MS. SEGAL:

No.

MR. GROSS:

No.

MS. SEGAL:

No. It was not something that was in the Board's jurisdiction.

D.P.O. CALARCO:

I think the County Code is pretty clear about our intention to have things disclosed, and I take umbrage to statements that we -- there is discrepancy there, and that's not the intention. I also

don't agree with what has been said a number of times about there being a discrepancy between elected officials and nonelected officials, because I don't see that discrepancy described in the code, and that was something that you have referenced a number of times here. I don't know if all three of you have, certainly Mr. Halverson hasn't.

MS. SEGAL:

Well, in terms of invasion of privacy.

D.P.O. CALARCO:

But our code does not say that.

MS. SEGAL:

No, but the New York State FOILs Exemptions Law, you have to assess invasion of privacy. So, of course, if someone is an elected official, I would view that as a different threshold as a nonelected official.

MR. GROSS:

Under FOIL.

MS. SPAHR:

And under the Constitution.

D.P.O. CALARCO:

Do you not see how you're parsing this issue in order to really -- as Legislator Trotta said, it really creates this -- very clear to the rest of us that you're trying to hide behind walls in order to not provide the information being asked or to -- you know, to sit here and say that our law says that we want these things to be disclosed, which doesn't actually -- that doesn't say you're not going to disclose it because it's not the way they filed the FOIL request instead of the request under the Board, and we're going to file the FOIL law instead of the County Law, don't you understand that that -- it doesn't look good? And here's the problem.

MR. GROSS:

May I respond? May I respond?

D.P.O. CALARCO:

The point of having an Ethics Board is to deal with when things don't look right.

CHAIRPERSON FLEMING:

Let Mr. Calarco finish his question and you'll have time to respond, Mr. Gross. Go ahead, Rob.

D.P.O. CALARCO:

The whole reason we have an Ethics Commission is to preserve the integrity of the County when it comes to our appearance, or, in reality, conflicts. And when we have a situation where we're sitting here in the room with you -- and I gave this Board all due respect throughout this process. And, in fact, on the night of debate about whether or not to issue the procedural motion, I said, "Listen, I think these guys are saying that they can't do this because they did a review, and they're trying to just abide by the letter of our law," and I understood that. But to sit here and say we're not going to treat a FOIL -- we're going to treat a FOIL request for a document differently than a formal request through our own request process for the same document, where the County has a very prescribed law that pertains to release of that document that this Legislature passed, do you not see how that inherently looks bad?

MR. GROSS:

This -- your -- you've created a body that has to follow a rule of law. That's what our country is all about, following law. We have an interpretation of the statute and how to proceed. Apparently, we're not meeting the Legislative intent of the committee before us. We will take under advisement what you have to say.

D.P.O. CALARCO:

Okay. I'll move on from this point, because I just -- if you don't see that that creates a bad appearance, that's -- I will move on from that. Let me get to the complaint filed by --

MR. GROSS:

It's not --

D.P.O. CALARCO:

No, no. I'm going to move on. I don't mean to slow this --

MR. GROSS:

It's not our job to make a determination of bad appearances.

CHAIRPERSON FLEMING:

Okay. Let's --

D.P.O. CALARCO:

Actually --

MR. GROSS:

It is not.

D.P.O. CALARCO:

-- it is the appearance of impropriety that your Board deals with on a regular basis. Because, unfortunately, in the world that we live in, and I know that's very real as an elected official, and who has spent his life basically working as an elected or for elected officials, the appearance of impropriety is something the public takes very seriously, whether or not impropriety actually occurred. And it's something that we have to really take seriously, and it's part of the reason for forming a Board to give us rulings and opinions on whether or not an appearance is -- that impropriety is -- exists.

MS. SPAHR:

May I respond?

D.P.O. CALARCO:

I'm going to move on.

MS. SPAHR:

May I respond to that factually, please?

CHAIRPERSON FLEMING:

But I don't think there was a question. So do you have a question?

D.P.O. CALARCO:

No, that wasn't a question.

CHAIRPERSON FLEMING:

So it doesn't require an answer.

MS. SPAHR:

But it doesn't say that in the law when you --

MR. GROSS:

You took that out.

MS. SPAHR:

When this law was enacted, you took out the provision of law that gave us the ability to make judgments about or punish people for doing things that have the appearance of impropriety.

D.P.O. CALARCO:

Ms. Spahr.

MS. SPAHR:

It's not even in the code.

LEG. TROTТА:

So if you --

D.P.O. CALARCO:

No, no, no, no. Legislator Trotta, I -- let me deal with this, all right? I have to disagree with you, because the law that says -- that states about how and when financial disclosure forms are going to be disclosed doesn't say that the Board can't accept a FOIL request as being the same as their own request. It doesn't say that. So you have every opportunity to say, okay, we are going to treat FOIL requests for these documents the same as a doc -- as a request for -- underneath our own code and statute, because it doesn't say that you can't. It says you shall prescribe how they will make those inspection requests.

So now what you're saying is, "Because they did it as a FOIL request instead of on the form that we provide, then we're not going to treat it under the same statute," and that's where my problem comes, and that's why there's an appearance, if nothing else, of impropriety, that it just doesn't smell right.

MS. SEGAL:

Legislator, would you like the FOIL procedures that the Board passed to be reviewed by the County Attorney's Office, since they do systematic appeals?

CHAIRPERSON FLEMING:

I think you're going to be providing us your policies and procedures, are you not?

MR. GROSS:

Yes.

MS. SPAHR:

Yes.

CHAIRPERSON FLEMING:

So, obviously, we're not -- we're not --

D.P.O. CALARCO:

Do you have it? Do you have it?

CHAIRPERSON FLEMING:

Let me just say here -- sorry, Rob -- but the inquiry is not concluded at the end of this hearing. We're going to have documents that we're going to be receiving, including policies and procedures. I think you feel -- you hear very clearly there are some very real concerns around this specific instance and the general approach, but I think we will get those and we will have an opportunity to review them. So I don't think this inquiry will be concluded at the end of this hearing. Anyway, go ahead, Rob.

D.P.O. CALARCO:

The law says, "Upon request of such forms as the Board shall prescribe." Do you have a prescribed process for requesting the forms?

MS. SPAHR:

Yes.

MS. SEGAL:

Yes.

D.P.O. CALARCO:

And so what you have told us is because they did not file your prescribed process, but, rather, a FOIL request, you treated the process differently?

MS. SEGAL:

No.

D.P.O. CALARCO:

Yes. That is what you testified. You said you had to treat it under the State FOIL law, not under the County provision of the law. That is exactly what you testified here.

CHAIRPERSON FLEMING:

But hold on. But hold on. I think there are two different questions here. Are you asking about the County Executive's request, because I don't think that --

D.P.O. CALARCO:

No. I'm asking about the -- I'm on the FOIL issue. I haven't gotten to the issue of whether or not there should have been an investigation where there were actual findings determined. I'm on the FOIL issue still.

CHAIRPERSON FLEMING:

So we had a FOIL request. It was a FOIL request, so they --

D.P.O. CALARCO:

Newsday filed a FOIL request for these documents.

MR. GROSS:

Pardon me?

D.P.O. CALARCO:

Right? Newsday filed the FOIL request asking for the financial disclosure form, that's very well established.

MR. GROSS:

Obviously.

D.P.O. CALARCO:

You have testified that you treated that under the New York State FOIL law, because that was a responsibility for you to do because it was a FOIL request.

MR. GROSS:

Yes.

D.P.O. CALARCO:

The County law doesn't have all of the same provisions of the State FOIL law, and, in fact, we make it very clear that we want all financial disclosure forms to be made available upon request, correct?

MR. GROSS:

(Nodded yes).

D.P.O. CALARCO:

It also says that those requests must be written and shall be done in a form prescribed by the Board, correct?

MS. SPAHR:

Right. And the form prescribed by the Board is the FOIL request.

D.P.O. CALARCO:

So what you are telling us is that because they didn't do it on your form and they did it on a FOIL form, you treated them differently?

MS. SPAHR:

The FOIL form is the Board's prescribed form.

D.P.O. CALARCO:

If the FOIL form is the Board's prescribed form of how people make a request for these documents, then why do you not make documents available under the same provision -- under the provision of the County law, which goes far beyond the FOIL law of the State and says you will make all documents available to the public?

MS. SEGAL:

I truly don't understand that question. I don't understand that question.

D.P.O. CALARCO:

This is the problem with having too many attorneys in the room. You're treating it under FOIL law, and you're telling me now that the only way someone can ask for the forms is under a FOIL request. But the County law doesn't say that these things are treated as FOIL requests. It says that --

CHAIRPERSON FLEMING:

All right. So I need to understand, Rob. Are you asking that even though it was, in fact, a FOIL request -- there wasn't any other request for the disclosure, it was a FOIL request. Even though it was a FOIL request, you're saying that they could have also reviewed it under a less stringent statute with regard to confidentiality?

D.P.O. CALARCO:

That is exactly what I'm saying, except here it gets to even the more complicated issue, Bridget. The County law says that you have to have -- you know, the Board can prescribe how a request is made under the County law, which is what I think is the law that the Board is supposed to operate,

first and foremost. But they also just told us they don't have a process that's separate and apart from the FOIL request, they just want people to file the FOIL request.

MR. GROSS:

We treat requests for documents as if it were a FOIL request, applying --

D.P.O. CALARCO:

But I guess, so --

MR. GROSS:

Can I please finish?

D.P.O. CALARCO:

Yeah, I'm sorry, go ahead.

MR. GROSS:

We do that because of the body of law that exists that provides for the balance between public release and individual rights, and with the overarching concern that the Board has regarding the confidentiality statute.

D.P.O. CALARCO:

So I guess this is where my --

MR. GROSS:

If indeed the Legislature, as a whole, gives the direction to the Board that we will release FDS's upon request, that would be followed if that's -- if that's the intent.

D.P.O. CALARCO:

Mr. Gross, in all due respect, that's exactly what the law says.

MR. GROSS:

I understand, but I'm saying to you we have a process that we've adopted applying the FOIL statute. If there's dissatisfaction with that, and the Legislature wants to indicate that, we'll change it.

D.P.O. CALARCO:

Mr. Gross --

CHAIRPERSON FLEMING:

I think you're hearing -- I think you're hearing that there is.

MR. GROSS:

Can't --

D.P.O. CALARCO:

Well, not only are you hearing that there is, I don't think I need to change my law to say that to you.

MR. GROSS:

I didn't say that.

MS. SEGAL:

But if I can --

MR. GROSS:

I didn't say change the law, I said give us an indication. We have certainly a committee. If the Legislature wants, through perhaps Counsel Nolan, to send a letter that it is the Legislative intent that you ask for an FDS on a scrap of paper, you get it, we'll do it.

MS. SEGAL:

From the internal side, because --

D.P.O. CALARCO:

Well, no, that's not what I'm saying, and I think you're minimalizing this, but --

MR. GROSS:

I'm not minimalizing it.

D.P.O. CALARCO:

The law says you guys can prescribe how to make a request, but if the way you prescribe and make the request is that they file a FOIL request, and then you're going to hold it to the State standard instead of the County standard, I think you set yourself up for the problem you're sitting in right now.

MR. GROSS:

That may very well be, but that's what the Board did, and that's what you --

D.P.O. CALARCO:

But no.

MR. GROSS:

That's what you authorized the Board to do.

D.P.O. CALARCO:

No. No, it's not.

MR. GROSS:

You said adopt your own rules, we did. If you're dissatisfied with them, we'll change them.

D.P.O. CALARCO:

We said the financial disclosure statements required by this article shall be maintained by the Board and shall be made available for the public inspection upon written request. We didn't say upon written request and under -- under the, you know, guidelines of State FOIL requirements. That's not what the law says.

MR. GROSS:

Mr. Calarco, I really do understand your point. And my point is that a determination was made by the Board, and you gave the Board the authority to establish rules, to apply the FOIL standards for I think relatively good reasons.

D.P.O. CALARCO:

I don't agree with that at all.

MR. GROSS:

I really would love to finish. That's what the Board did. If there's dissatisfaction with what the rules are, and we've submitted, as the Chairperson indicated, we've submitted them. If you don't

want us to do that, we'll stop doing it.

CHAIRPERSON FLEMING:

And I think that one of the things that I'm hearing from Legislator Calarco is not only, Mr. Gross, that the rules are different from the Legislative intent, although they might be, and we've got to take a hard look at them, I think our concern is the balance that is being struck is protecting confidentiality under a couple of guises that we do not agree applies, to the detriment of the paramount public interest of public exposure -- disclosure, which is spelled out in 77-14, which simply states information filed in FDS required by this article shall be maintained by the Board, and shall be made available for public inspection upon written request.

MR. GROSS:

One of the wonderful things about this process, and you --

CHAIRPERSON FLEMING:

I'm just concerned, did that land? Before you -- before you come back, it's very important that this -- that the takeaway here is not just -- this is not adversarial, you are not under oath. We are not accusing, you are not defending. We're trying to figure it out. We're exercising our oversight and guidance responsibilities. And I think it's very important that we understand that you hear that that balance was not struck in a way that the Legislative intent intended for it to be, nor the current members of this Ways and Means Committee. Do you hear that?

MS. SPAHR:

We hear.

CHAIRPERSON FLEMING:

Thank you.

MS. SEGAL:

I have a question that is very integral to being able to execute what you're expressing, because I currently am the one in the office who fulfills these duties between Board meetings. I've had this conversation many times with the County Law Department over the years in trying to figure out in terms of my Civil Service job duty statements, how to execute certain things without running afoul of not only my job duties, but Legislative intent. The mechanisms that you're looking for disclosure, I understand completely what you're saying, and the ease of release you're looking for them. If that ease of release occurs, what would you -- what would your expectation and anticipation be of an FDS document that is in an active audit or active Board review? Would you want it released to the public and during the pendency, or would you want it to be on conclusion, because that could help me clarify the timing of this.

D.P.O. CALARCO:

Ms. Segal, that is absolutely a point that clarification needs to be brought up. I actually had said, I said this the night of our debate over whether or not to compel the documents to be provided, was that I understood that that -- you were towing the letter of the law, and you had very concern -- real concerns that because there was a review, an investigation, whatever you want to call it, going on on this particular situation, that you felt that those documents became part of that process and were then subject to that confidentiality clause. I get that, I understand that. I cede that point to you, although some of my colleagues may not. I think I under -- I understand that. But what I don't understand is that when you're saying that you're going to tow the letter of the law in every way whatsoever, that you don't tow the letter of the law through the County's law when it comes to section -- the section regarding disclosure of the forms making it public, 77-14. It doesn't say that it's done subject to FOIL law.

MS. SEGAL:

Okay.

D.P.O. CALARCO:

It says that it --

MS. SEGAL:

That being said, this is the one instance that has highlighted this conflict. So when -- if I'm not giving you a clear answer in terms of the way it has been dealt with in the past -- we've never had this crossroad. So that being said --

D.P.O. CALARCO:

Well, then maybe that's a good thing that we haven't had it before in the past, but --

MS. SEGAL:

So that being said, any type of FOIL timings that have occurred in the past haven't been contemporaneous with investigations or audits or reviews. So that being said, going forward, because we do have active investigations right now in the -- in the Board of Ethics, we do -- we are in an auditing cycle, we do our audits for outside employment and contracts with the County with every Department Head in this County. So going forward in this cycle, I would like clarification if we're in an active review. If you think that it's beneficial to the public that you want it released contemporaneously, and that will not influence the Board having to recuse themselves, then I would like that clarification.

D.P.O. CALARCO:

I understand that, and that is certainly something that we will have to take up on our side of this dais.

CHAIRPERSON FLEMING:

Do you have further questions, Rob?

D.P.O. CALARCO:

I do, and I'm going to move on from the disclosure forms, because --

MS. SPAHR:

May I -- I'm sorry, but may I at least provide to you, first of all, this is very challenging. We've been -- we've adopted regulations. We were required to adopt regulations and procedures. They're not perfect. I mean, we amend them. But we report to the Legislature on what we've accomplished.

I'm looking at our annual report for 2014, which was submitted to the Board -- rather, to the Legislature in March of 2015. It includes in it the procedures that were adopted by the Board for Freedom of Information procedures, including individuals wishing to review financial disclosure statements. It's in writing. It was adopted by us. It was amended on several different occasions. We presented it to the Legislature. We've probably bored you to death with our annual reports, and maybe this stuff was just buried. We seek review, we seek input. We're working really hard to try to make our job reflect well on the County. So, please, whatever input you want, we've given you the information, and we just ask you to look at the things we have provided and to see that we're working --

CHAIRPERSON FLEMING:

Yeah.

MS. SPAHR:

-- you know, in good faith.

CHAIRPERSON FLEMING:

And I don't think anybody's questioning your conscientiousness. I think that there's some disagreement, but I don't think anyone's questioning your conscientiousness.

We're running up against losing our quorum because of the number of people who have other things. Do you have -- do you have more questions? And then Bill has some questions, then I think we're going for wrap up.

D.P.O. CALARCO:

I do. I have one more question and it gets to the complaint process. So you stated that there was no formal investigation undertaken in this particular situation because the County Executive failed to file the complaint according to your --

MR. GROSS:

That's not accurate. That's one of the reasons. And I'm a little concerned about publicly getting into some of the other reasons that that determination was made. I would respectfully request that you -- I mean, we can do that in camera with perhaps Mr. Nolan.

D.P.O. CALARCO:

So I'll try to keep it general.

CHAIRPERSON FLEMING:

I could just say that a vote to go into Executive Session just has to be a majority. Someone has to make the motion and there has to be a majority vote. So we can determine whether or not we need to, but I'm not sure that we need to at this point. But just so you know, that's a mechanism that's available.

D.P.O. CALARCO:

I'll try to keep it where I thought my question was related to, what I've already heard here today, but -- so what I heard was that even though the County Executive submitted a letter that says in the very first line of the letter that he's asking for an investigation, that the Board did not take that as an official complaint.

MR. GROSS:

The Board -- that's correct, but it was taken very seriously. And I would be more than happy if we went into Executive Session.

D.P.O. CALARCO:

So -- no, no, I don't need to go into Executive Session on this, because --

MR. GROSS:

I'm trying to --

D.P.O. CALARCO:

Because this is going to get to a broader point here. Because, you know what, I'll give you, the County Executive probably should have known how to make a complaint in a formal process. All right, I'll give you that. What about John Q. Public? What about somebody who is not the County Executive, who does not get the training qualifications? So if that person -- and you already said you can't help that person file a complaint.

MR. GROSS:

No, but you misunderstood. If somebody submits something, it goes to the Board for review, anything, and the Board has the authority under the statute and its rules to self-initiate a complaint, to convert a referral or a letter into a formal complaint and then conduct a formal investigation. There were reasons that the Board chose not to have a self-initiating complaint based on County Executive Bellone's letter. I don't want you to think it was simply because of a form, it wasn't.

MS. SEGAL:

The Board gets lots of submissions in different formats. They're all presented to the Board. Not all of them rise to the level of a self-initiating complaint, which requires the Board to have a majority vote and formal investigation by super-majority vote.

D.P.O. CALARCO:

I guess the question is why don't you take everyone as an official complaint? And maybe you dismiss it because it doesn't have enough in it to really do -- to warrant a full out investigation. I can appreciate that. Some people make complaints all the time that, you know, may or may not be warranted.

MR. GROSS:

I think you might have to add a bit of staff.

MS. SPAHR:

It would help to have an investigator.

MR. GROSS:

It's kind of tough with two people, essentially.

MS. SEGAL:

I mean, at this point, we have requested an investigator for four years in a row and at this point we don't have one. It would -- it would absolutely assist the process to have an investigator.

D.P.O. CALARCO:

It would make it very helpful if you come do that during the budget process.

MR. GROSS:

We have.

MS. SEGAL:

We have.

D.P.O. CALARCO:

Okay, okay.

MS. SPAHR:

We do, four years.

CHAIRPERSON FLEMING:

Any further questions, Rob? We can go to Bill and come back to you.

D.P.O. CALARCO:

I guess probably I'm not going to get the answer to the question I'm asking without going into Executive Session, so I'll just let it go.

CHAIRPERSON FLEMING:

We can go in if you want. Okay, Bill.

MS. SPAHR:

Good afternoon. We've passed through morning and entered afternoon. So I appreciate your patience and the information that you provided today. I have a couple of really brief questions. I won't make any statements. But my first question is was Mr. Prudenti notified of the FOIL request by Newsday prior to a determination being made?

MR. GROSS:

We don't -- I don't know.

MS. SPAHR:

Okay.

MS. SEGAL:

Give me a time frame again.

MS. SPAHR:

Was he notified of the FOIL request by Newsday prior to you guys making a determination not to release the documents?

MS. SEGAL:

I have to look.

MS. SPAHR:

It's okay, take your time.

CHAIRPERSON FLEMING:

Well, I can step in here just to say I think the FOIL request was denied on July the 11th, and we understand that the response to Bellone was September 22nd. So I think the --

MS. SPAHR:

No. My question is was Mr. Prudenti notified prior to that?

MS. SEGAL:

Just in terms of the FOIL request?

MS. SPAHR:

Yes.

MS. SEGAL:

The filers aren't informed of a request coming -- they are informed if a production occurs.

MS. SPAHR:

So someone -- so if someone requests my disclosure forms --

MS. SEGAL:

If it's going to be produced, we will call you and we will confirm that all your addresses come out and everything.

MS. SPAHR:

Okay.

MS. SEGAL:

If it's going to be produced.

MS. SPAHR:

But if it's not --

MS. SEGAL:

And then a letter is sent to them.

MS. SPAHR:

If a denial is issued, you don't notify me that somebody requested my information?

MS. SEGAL:

No. You have the right to put in a request to know if anyone has ever requested your information under, you know, open -- the open government meeting laws.

MS. SPAHR:

Okay.

MS. SEGAL:

You can request it, but if it's produced, we're required under the law to advise of the name of the individual who it was produced to.

MS. SPAHR:

Okay. So it's safe to say, until the Newsday story came out, that --

MS. SEGAL:

No.

MS. SPAHR:

-- this documentation was requested and it was denied, Mr. Prudenti had no knowledge that this information was even requested?

MR. GROSS:

We can't speak for him, but we don't know of anything that would have led him to know.

MS. SPAHR:

Okay. But you --

MS. SEGAL:

And that's just for procedure in the office, it wouldn't be specific to this.

MS. SPAHR:

Okay.

MR. GROSS:

Yeah. This matter, I will assure you, the only persons who are involved in the review is the Records Access Officer, the Records Appeals Officer and my firm.

MS. SPAHR:

Okay.

MR. GROSS:

Nobody else.

MS. SPAHR:

Okay. That -- so then it's safe to say that he was never notified until he probably read it in the paper and that's how he found out about it?

MR. GROSS:

Probably. I don't know what he knew or didn't know.

MS. SPAHR:

Okay.

MR. GROSS:

I mean, certainly, his attorney knew, because he dragged us into court.

MS. SPAHR:

Of course, of course. Which leads me to my second question, and this, I guess, would be to you, Mr. Gross, since you were in court yesterday. Were you advocating in favor of the TRO or against the TRO?

MR. GROSS:

I was not advocating one way --

MS. SPAHR:

Okay.

MR. GROSS:

I had indicated to the Court we are a stakeholder. The directive -- the direction of the TRO was directed to stopping us from releasing, pursuant to the Legislator's request. Mr. Nolan was present. Your County Attorney, George, I can't remember his name.

MR. NOLAN:

John Petrowski.

MR. GROSS:

Did a very fine job arguing in favor of your position. We took a stakeholder position.

MS. SPAHR:

Okay.

MR. GROSS:

And, indeed, today, when the Judge indicated he wanted a -- just to underscore our confidentiality concerns, that he wanted the documents produced at his office, we asked in front of all counsel, could we have an order of the court that the release of the document to the court, would it -- that the court determine that would not be a violation of the confidentiality provisions. We took a neutral position as stakeholders.

MS. SPAHR:

Okay. So you were really just protecting the rights of the Board and --

MR. GROSS:

Oh, absolutely.

MS. SPAHR:

-- and so forth. Okay. I can understand that and appreciate it.

MR. GROSS:

And we didn't support the Legislature or oppose the Legislature.

MS. SPAHR:

Okay. Was the Board at any time contacted from anyone from the DA's Office during this whole process?

MR. GROSS:

Contacted by the DA? No.

MS. SPAHR:

No, contacted by the D.A. Did the D.A. reach out to anybody on the Board?

MR. GROSS:

No.

MS. SPAHR:

And now this is just a hypothetical. If, during our ethics training, which we all go through, and I'm assuming the ADAs go through that training as well?

MR. GROSS:

They do.

MS. SEGAL:

Yeah. Our last -- I believe it was last cycle, last cycle, I believe there was 89 ADAs who attended.

MS. SPAHR:

Okay.

MS. SEGAL:

And they received their continuing legal education credit for attending.

MS. SPAHR:

Okay. If during that session they asked a hypothetical question of, "Hey, I have a car that I want to rent to defense attorneys," how is that -- how would that fall under our ethical guidelines, and would we be allowed to do that, would we not be allowed to do that? What would your response be?

MR. GROSS:

I think we would probably entertain -- I don't do much of the training, another partner does, but the ones I've done, certainly there are questions, and we try to give as much guidance as we can --

MS. SPAHR:

Sure.

MR. GROSS:

-- based on the statute.

MS. SEGAL:

Well, we do -- we do make it clear in the onset that we're under a very strict CLE schedule, and any

specific questions have to be submitted on advisory opinion forms. We don't do ad hoc opinions --

MS. SPAHR:

So you wouldn't --

MS. SEGAL:

-- because we can't speak on behalf of the Board. Unless it's a matter that's already determined by the Board in other advisory opinions, the Board has directed the training consultants and myself not to give ad hoc advisory opinions, because we can't speak on -- for a Board vote.

MS. SPAHR:

So you wouldn't be able to answer the question, is what you're saying?

MS. SEGAL:

Well, unless it had been previously been decided. If that subject matter had previously been decided --

MS. SPAHR:

Okay.

MS. SEGAL:

-- then we absolutely could.

MS. SPAHR:

Has that subject matter ever been decided before?

MS. SEGAL:

With respect to a car, no.

MS. SPAHR:

How about with respect to anything being -- any kind of transaction between defense attorneys and ADAs?

MS. SPAHR:

No.

MS. SEGAL:

Under this -- under the Suffolk County Board of Ethics, I don't believe.

MS. SPAHR:

Okay.

MS. SEGAL:

I don't believe there's been any with respect to prosecutors.

MR. GROSS:

As far as I know, neither a car, boat, plane, train.

MS. SPAHR:

I mean any financial transactions.

MS. SEGAL:

I certainly will review the advisory opinion index, and if there is anything relevant and on point, I

certainly will provide it to you.

MS. SPAHR:

If there's been a decision that's been made on point to the question, then we'll refer them to the decisions we've published, and the CLE training includes references to prior decisions. Probably all of you know that there are questions that come up during the training where the answer is seek an advisory opinion.

MS. SPAHR:

Okay.

MS. SPAHR:

And that's probably how that question would be answered.

MS. SPAHR:

Well, yeah, we just got -- and I'm trying to find it as you guys are answering the question. We just got a memorandum, just basically reminding us about holiday gifts, that we're not allowed to accept any.

MS. SEGAL:

I just got -- I just received the --

MS. SPAHR:

Okay.

MS. SEGAL:

-- the email from Darlene that it was on the tickler for today and it was distributed.

MS. SPAHR:

So nothing similar to that has ever been put out regarding any financial transactions between any County employees, really, but ADAs specifically and defense counsels?

MR. GROSS:

Not that I know of.

MS. SEGAL:

Just so I'm clear, like --

MR. GROSS:

He means an advisory opinion.

MS. SEGAL:

-- an advisory opinion?

MS. SPAHR:

Yeah, just an advisory opinion.

MS. SEGAL:

I don't think we have one with respect to a prosecutor at this point.

MS. SPAHR:

Okay.

MS. SPAHR:

But there's a lot with respect to doing business with County agencies, other sources of income that could be conflicts. There have been people that want to serve on boards that are funded by the County, or individuals that are employees that, as it turns out, are doing business with the County and that's prohibited. So as these things come up, we include them in the training program and in these little poster series that we do and employee memos.

MR. GROSS:

In large measure, the conflicts that are covered by Part 800 of the General Municipal Law, which is the derivative, the statute from which your statute is derived, focus on economic transactions, particularly where, or predominantly where the employee may have a contract, or be voting on a contract, or participating in the review of a contract that they have a financial interest in. That's the predominant conflict of interest statute.

MS. SPAHR:

Sure. No, I can understand that, I can appreciate that. When I go through my own disclosure forms, I spend a significant amount of time. I own my own insurance practice. My concern is always that one of my clients in some way is doing business with the County that I'm not aware of, and I spend a significant amount of time investigating that to make sure that if that is occurring, that it's disclosed. Fortunately for me, up to this point it hasn't happen. But wouldn't -- wouldn't it be safe to say that if for -- especially an ADA, given the authority and the power that they have, that any financial transaction that exists between them and defense counsels or judges, or anyone in that whole court community, should be disclosed within their financial statements?

MR. GROSS:

That's kind of a tough question. I think, again, we follow a set of rules, and I think if you submitted or the Board wanted -- the Committee wanted to submit a request for an advisory opinion, we'd undertake it.

MS. SPAHR:

And the other thing is the questions on the financial disclosure statement are established by the Legislature. We've come up with a guide to try to help filers, I think it was last year, determine what information needs to be disclosed or not to assist with compliance.

The other thing that's important to note is that when it comes to attorney conduct, there's a whole other body of law relating to attorney ethics. There's the Attorney Disciplinary Committee and --

MS. SPAHR:

Right.

MS. SPAHR:

-- Ethics Committee, so those are sometimes --

MS. SPAHR:

Sure, I understand all that. And I'm just really directing it towards our form. So, you know, under the form, we have gifts to you or your spouse, or domestic partner, or unemancipated children. Wouldn't -- so if there was a financial transaction, wouldn't that fall under that particular section?

MS. SEGAL:

Maybe.

MS. SPAHR:

There's another -- another recommendation we made in our last report for a definition of gift in --

MS. SPAHR:

Okay.

MS. SPAHR:

-- the statute, so, yeah.

MS. SEGAL:

And it's -- you know, I mean, this is a new body with three years of precedent.

MS. SPAHR:

Right.

MS. SEGAL:

I mean, these are -- these are -- they are probably more frustrating to the current administration than in other administrations who's had 20 or 30 years to establish precedent and to see how these laws actually play out when they are, in fact, put into -- into force.

You know, with respect to the form itself, one of the major changes in the form when the Board came on, and it was not a Board recommendation, but it was just, I know, a change in the disclosure, and a few of the Legislators that called about this over the past few years, because there is no -- there was no section to disclose cash in the form, and a few have called to, you know, highlight the fact that that was -- that's an area that's not -- that's not elicited out the form currently in terms of cash values, in terms of bank accounts, things of that nature.

The other area we get a lot of questions on is in terms of what is income, and we've been directed in the office, through the advice of Counsel, obviously not to give definitions of income, and tell people to --

MS. SPAHR:

Yeah, but I think the form is pretty clear. It's report the nature and amount of any income of \$1,000 or more. I mean, that's --

MS. SEGAL:

No, I know, but when -- I am an attorney, I am certainly not a CPA or a financial person. You know, we having -- we have received very sophisticated questions from individuals who file, also private sector individuals, because, again, a lot of boards and commissions are staffed by very successful business individuals in the County and they want to know exactly what -- should they be listening to a CPA what income is, should they be listening to the IRS what income is. So we don't -- we don't lead people into financial advice in terms of form preparation.

MR. GROSS:

If I may --

MS. SPAHR:

Sure.

MR. GROSS:

-- respectfully. The reason for the advisory opinion process is that -- is for contemplative review of the question. I feel utterly uncomfortable sitting here rendering an opinion whether or not what the County Executive raised in his letter rises to the level --

MS. SPAHR:

I'm not, but this -- I mean, I understand your perspective, but at the same time, to me, income is a very -- it's not an ambiguous term, it's you're receiving either money, or securities, or something of value of \$1,000 or more. That's pretty simplistic.

MS. SEGAL:

You know, we get a lot of calls, people asking about disability checks, or disability checks income, or, "If it's something that's not being reported on my taxes, is it something that I have to put on this type of a form," when it talks -- if it's not incomes, like -- like we got -- we got some inquiries with respect to the Widows Fund of 9/11, because there's individuals in the County who receive that, and that's exempted as income under the IRS. So there's -- we get a lot of questions that don't fit the form, so, you know, we tend to --

MS. SPAHR:

Okay. I mean, maybe I take too much of a simplistic view of the form. To me, income is income. There's --

MS. SEGAL:

And since we host the document, we get a lot of questions that vary.

MS. SPAHR:

Okay.

MS. SEGAL:

So we tend to defer people to their -- obviously, to their financial professionals.

MR. GROSS:

If you wanted an advisory opinion --

MS. SEGAL:

Opinion on it.

MR. GROSS:

-- send it to us and we'll do it.

MS. SPAHR:

I mean, I think in light of everything that's gone on, we should -- you know, I will request an advisory opinion on this, you know, for nothing more, for the sake of --

MS. SEGAL:

Educational purposes.

MS. SPAHR:

Yeah, the educational purposes, and the other ADAs that are out there that are concerned, or maybe have opportunities to do some other things and they want to protect themselves.

MR. GROSS:

We'd be happy to do that, but I would hope that perhaps you could frame a letter, questions.

*(*The following testimony was taken & transcribed by
Alison Mahoney - Court Stenographer*)*

MS. SPAHR:

Of course. No, we'll do it in the formal -- go through the formal channels and make sure it's properly formatted.

My last question is -- it's somewhat of a hypothetical, but if the judge converts the TRO into a permanent restraining order, what is that -- what's the ramifications of that action going forward for anyone filing these forms?

MR. GROSS:

I don't want to presume that the judge is going to necessarily do that.

MS. SPAHR:

I don't want to presume that either, but I think we need to be prepared in case that happens.

MR. GROSS:

Well, there's a number of levels of answers. Certainly, Mr. Nolan or the County Attorney would have the right to appeal immediately to the Appellate Division. There's issues as to whether or not that would bind the municipal body, the Legislature. I think we would be very concerned about that as well and participate in some discussions with Counsel how to contest it. I think it would have a relatively negative implication because these -- I hope what's come across today is that we carefully look at this on a case-by-case basis, and a blanket rule like that I think would be problematic.

MS. SPAHR:

Okay. I'll yield. Thank you, Madam Chairman.

CHAIRWOMAN FLEMING:

Sure. And Mr. Trotta, did you have a final question? And then I have a few to clarify.

LEG. TROTТА:

Yeah. You said that you -- I don't know if you said this exactly, but paraphrasing; there was no full investigation done, it was a preliminary look at type thing or something?

MR. GROSS:

It wasn't preliminary, it was a review of his letter; yes, sir.

LEG. TROTТА:

Okay. Was the reason that you didn't take it any further because you learned of another ongoing investigation?

MR. GROSS:

No, sir.

LEG. TROTТА:

And just --

MR. GROSS:

I don't think we knew about the investigation, actually.

LEG. TROTТА:

Okay. And just on Legislator Lindsay's topic, maybe you should put some parameters together without having us to put, you know, letters in for each individual thing. Like, you know, just sort of like some no-brainers.

MS. SEGAL:

Parameters for what?

LEG. TROTТА:

You know, like I have a boat and I'm renting it to -- I'm a DA and I'm renting it to defense attorneys, you can't take money from them. You know, things like that.

MS. SEGAL:

Just so I'm --

MR. GROSS:

Just off the top of our head.

*(*Laughter*)*

LEG. TROTТА:

Something along those lines.

MR. GROSS:

I think your point is well taken and I think we need to look at perhaps the issuance of guidance documents.

MS. SEGAL:

And are you thinking in forms of -- so the Board's rendered approximately 50 advisory opinions to data, a lot of them with respect to outside employment or outside conflicts. Are you looking for a synopsis of those documents? Because right now they're --

LEG. TROTТА:

No, just like a common sense, *Hey, listen, you can't* -- you know, maybe a policy that you adopt

through the DA's Office or through whatever -- well, cops don't fill these out. You know, *Hey, listen, you can't do this, you can't do this, you can't do this, you can't do this.*

MS. SPAHR:

Great idea. And we've been working on some versions of that, but we obviously need to do more.

LEG. TROTТА:

This is why -- you know, every advisory -- you know what it is? You know, we've got to do an advisory for this and it's got to go in front of the board and six weeks go by, you know.

MS. SPAHR:

And, you know, we've done some brief efforts with that. The staff has done a couple of annual newsletters to employees with general advice like that, but we need to do more.

LEG. TROTТА:

You know, the one-page, you know, cheat sheet of what you can't cheat on.

MS. SPAHR:

Yes. Great idea.

LEG. TROTТА:

The next thing is --

MR. GROSS:

Just one other thing, Legislator Trotta, one last quick point. This is a County of thousands of employees and hundreds and hundreds of political officials. This is a lay board of five people with one Executive Director and one secretary, and they do the best they can. It's kind of -- you know, to kind of spawn the type of suggestion you make, which I think is a good suggestion, really requires a lot of time and a lot of effort, and they put in enormous time as it is.

LEG. TROTТА:

My last question; why did it take from whenever he put the letter in in May to September to get a response?

MS. SEGAL:

That's not an accurate depiction of the timeline.

LEG. TROTТА:

Well, whenever he put the -- I don't know when he --

MS. SEGAL:

Like I said, we have already said we will provide the additional information for the timeline that you were looking.

LEG. TROTТА:

Like June, I think it was May or June and then he got a response in September, only after a prompting I think.

MS. SEGAL:

Uh, I don't think that's an accurate, depiction in terms of --

LEG. TROTТА:

Rob, is that correct?

MS. SPAHR:

Was the FOIL request May or the --

MR. GROSS:

No, no, Bellone's.

MS. SPAHR:

Bellone? Okay.

LEG. TROTТА:

From Bellone's letter, which I think was May, and he didn't get a response till September. I mean, that -- what happened there? And the response was basically not a response.

MS. SEGAL:

Again, if you -- I don't know if you want certified copies from our office in terms of the chain of events or something to that effect.

LEG. TROTТА:

Well, when did the letter come in from Bellone?

MR. GROSS:

In May.

LEG. TROTТА:

In May.

MR. GROSS:

The first letter.

LEG. TROTТА:

Okay. And then the response to him that the thing was concluded was in September.

MR. GROSS:

Yes, sir.

LEG. TROTТА:

That seems like a --

MS. SEGAL:

That does not conclude that there was no other communications in those -- in the interim, in four months; that's not an accurate representation.

LEG. TROTТА:

Well, the fact that it was closed came in September.

MR. GROSS:

Yes, sir.

LEG. TROTТА:

So, still --

MS. SEGAL:

Well, but Counsel has already stated that the documents were under an active review.

MR. GROSS:

You're talking about a lay board that meets periodically and they assiduously did what they had to do, but these people have jobs, they have other responsibilities. And when it was completed --

LEG. TROTTA:

Then it gets paid?

MS. SEGAL:

And again, if you --

MS. SPAHR:

We get a stipend for each meeting. Yes, we receive a stipend; not for this.

LEG. TROTTA:

Not for this.

*(*Laughter*)*

MS. SPAHR:

Not for this; this is for free.

CHAIRWOMAN FLEMING:

But I do think Legislator Trotta's point is extremely important if you are relying on the fact that there's an ongoing investigation to deny public disclosure of very important information.

LEG. TROTTA:

And --

CHAIRWOMAN FLEMING:

If that's going to take that amount of time and have the result of denying to the public and the fourth estate, our, you know, journalists important information in the public discussion, then there is a problem with how long those investigations are taking.

MS. SPAHR:

It's a big problem and staff would help.

MS. SEGAL:

Again -- if I could, Linda. Investigations tend to warrant an investigator. So if an investigator was funded to this board, it may facilitate the timeframe.

LEG. TROTTA:

Well, I think it would take me about 35 seconds, once I looked at the thing, to determine if there was a problem.

CHAIRWOMAN FLEMING:

Or determine that it wasn't a problem.

LEG. TROTTA:

Well, determine if it required an investigator; and clearly, apparently, in this case it didn't.

MS. SEGAL:

But in terms of the timeframe itself, the Board follows the resolutions that are in place for FDS review audits. We will leave a copy with you so you see what those procedures are.

CHAIRWOMAN FLEMING:

You're good? Okay. So, yeah, we do need a few things. We need the policies and procedures. I think you said that when a request is denied it's filed with the Committee on Open Government. Is that --

MS. SEGAL:

A FOIL request. A FOIL request, that's correct.

CHAIRWOMAN FLEMING:

So, and is that a separate document from the letter that you sent to Mr. Schwartz?

MS. SEGAL:

It's a CC.

MR. GROSS:

Transmission.

MS. SEGAL:

It's the fourth page of that document.

CHAIRWOMAN FLEMING:

Okay. Is there any other filing with the Committee on Open Government when you do a FOIL request?

MS. SEGAL:

We do a hard copy file and we do a fax transmittal; I have that.

CHAIRWOMAN FLEMING:

But I just mean is there any other information that was shared with them that we the committee don't have.

MS. SEGAL:

Oh, no, it's that letter.

CHAIRWOMAN FLEMING:

I just want to finish up. So, and there's a memo here with the County, I'd love to have -- I think we need a copy of that. I have a question as to the 162 FOIL requests; you said that this -- over the years, you said that this is the only law enforcement officer; I just want to confirm that that's true.

MS. SEGAL:

Not elected; not elected law enforcement officer.

CHAIRWOMAN FLEMING:

So there was an elected law enforcement officer?

MS. SEGAL:

I would have to -- I believe elected officials tend to be requested annually, so any elected official who's a department head would have been requested in the past.

CHAIRWOMAN FLEMING:

Okay. But I need to take a look at --

MS. SEGAL:

I will confirm those in terms of what years.

CHAIRWOMAN FLEMING:

Okay, that would be good. Great, thank you. You also said that only three FOIL requests have been denied in that time. Have any been redacted and released?

MS. SEGAL:

We have to redact under the County Code, absolutely.

CHAIRWOMAN FLEMING:

And other than the categories of value, are there ones that were redacted and released?

MS. SEGAL:

And that's pursuant to Board policy, I can leave you the copy of what those are. They're systematic.

CHAIRWOMAN FLEMING:

Okay. Other than the systematic redactions that you do as a matter of course, were there any -- you said that there were no disclosures completely denied except this one. Were there any that were -- I'm sorry, except the three. Were there any that were granted, the disclosures were granted but there were redactions beyond your standard redactions.

MS. SEGAL:

On financial disclosure statements only, we have about 30 categories of -- just financial disclosure statements you're speaking to?

CHAIRWOMAN FLEMING:

Yep.

MS. SEGAL:

I mean, if those privacy requests were put in by the filers under the code, but then we have to vote -- then the Board has to vote on every privacy request, too.

CHAIRWOMAN FLEMING:

Okay. But, and so as a result of that, were there some that were, based on privacy requests that were redacted and released, of the 162?

MS. SEGAL:

Oh, absolutely.

CHAIRWOMAN FLEMING:

Okay. And were there any that were not denied but redacted and released when that privacy request was not requested by the filer? Because we think in this instance he did not request privacy, right? So my question is were there any that were released and redacted from where the filer did not request any sort of privacy protection?

MS. SEGAL:

So it's a filer, no privacy and redaction; that's the question?

MR. NOLAN:

Yes.

MS. SEGAL:

Yes.

CHAIRWOMAN FLEMING:

Okay. So you sua sponte decide on privacy --

MS. SEGAL:

No, not in that capacity.

CHAIRWOMAN FLEMING:

-- even when the filer hasn't asked.

MS. SEGAL:

I don't in sua sponte in any capacity decide anything. It's only the board --

CHAIRWOMAN FLEMING:

No, I don't mean you.

MS. SEGAL:

-- redaction policy.

CHAIRWOMAN FLEMING:

Okay, the Board. The Board has on its own motion, on its own volition, made redactions on privacy -- on a privacy basis even if the filer did not request it.

MS. SEGAL:

Based on the review of what the most common requests are for children's names, spouse's names, home phone numbers, yes.

CHAIRWOMAN FLEMING:

But any with regard to the jeopardizing of safety or privacy interests that you've relied on here?

MS. SEGAL:

Yes. In terms of safety? Yes.

CHAIRWOMAN FLEMING:

You did that on your own.

MS. SEGAL:

I did not, the Board did.

CHAIRWOMAN FLEMING:

I understand.

MS. SEGAL:

Well, it's a clarification because the administration has no ability to make a decision on behalf of the Board.

CHAIRWOMAN FLEMING:

Understood. Have you ever -- okay. Are there any other types of information, other than those

that you've outlined, that you have redacted or otherwise withheld?

MS. SEGAL:

I can tell you it's Policy No. 002 of 2014 that lists them all out.

CHAIRWOMAN FLEMING:

And those are the only -- those are the only redactions or withholding that you do unless you are specifically requested, or unless it's a law enforcement officer.

MS. SEGAL:

Or FOIL. I mean, we have to do FOIL exemptions and we have -- because we have lots of documents, FOIL exemptions, and we go under this policy redaction from 2014.

CHAIRWOMAN FLEMING:

Okay, thank you.

MS. SEGAL:

There's nothing outside that the Board hasn't discussed.

CHAIRWOMAN FLEMING:

Okay. Is it ever appropriate to redact information on a financial disclosure statement that relates to the source of an employee's income? That's I think a yes or no question, because we're running -- is there ever -- is it ever appropriate to redact information on an FDS that relates to the source of an employee's income?

MS. SEGAL:

With respect to licensed professionals, there have been times when attorneys list --

MS. SPAHR:

Like their spouses.

MS. SEGAL:

Their spouse's client matter lists, those we don't leave on if they list them. Anyone else who has privilege material, we don't -- we take it off.

CHAIRWOMAN FLEMING:

Privilege material with regard to the source of their income?

MS. SEGAL:

Correct, because if they list their spouse's client roster inadvertently and they're licensed attorney's, we'll take those off.

CHAIRWOMAN FLEMING:

Okay. So other than the senior spouse's clients, is there any instance under which it's appropriate to redact information on an FDS that relates to the source of a filer's income?

MS. SEGAL:

Categories of value have to come off.

CHAIRWOMAN FLEMING:

Source.

MS. SEGAL:

No, this --

CHAIRWOMAN FLEMING:

Okay, thank you. And what about -- is it ever -- that answers it. If you want to -- I mean, this isn't under oath, this isn't adversary, if you want to clarify that in the future. We're just trying to get to the bottom of things,. Is it ever appropriate to redact information on an FDS of gifts received by an employee? Ever appropriate to redact that? I'm thinking the answers to these questions are no, but I think it's important to get them on the record.

MS. SEGAL:

No, that's why I'm sitting, because I'm thinking in terms of if there's ever been any outlier situations why it would have been requested.

MS. SPAHR:

I don't think so.

MS. SEGAL:

I mean, I don't have those -- I can't think of one off the top of my head where we did, but I'll look to see statistically if we did.

CHAIRWOMAN FLEMING:

Okay. Ever appropriate to redact information regarding agreements for future employment?

MS. SEGAL:

No.

CHAIRWOMAN FLEMING:

Ever --

MS. SEGAL:

And if privacy requests are put in, they are considered by the Board and determined. So I can't speak to if any --

CHAIRWOMAN FLEMING:

This is kind of common sense. It's just really a question -- I think the point is the public should have the opportunity to scrutinize potential conflicts.

MS. SEGAL:

No, I agree with you.

CHAIRWOMAN FLEMING:

So I'm wondering if it's ever appropriate --

MS. SEGAL:

In making a record --

CHAIRWOMAN FLEMING:

And what may -- some of these may be what would be interesting to see in the instance that you have not, you know --

MS. SEGAL:

Oh, absolutely.

CHAIRWOMAN FLEMING:

So the last question on that, is there ever any time when it's appropriate to redact an employee's business investments?

MS. SEGAL:

No, I don't know that we've ever done that.

CHAIRWOMAN FLEMING:

Okay. You had said that there were no financial disclosure forms from Mr. Prudenti prior to 2006 because of record retention?

MS. SEGAL:

Correct.

MR. GROSS:

In the Board's possession, yes.

CHAIRWOMAN FLEMING:

Great. Is there a record as to whether they ever existed?

MS. SPAHR:

Yes.

MS. SEGAL:

Yes, and that's filed with the County Clerk and the Law Department.

CHAIRWOMAN FLEMING:

Okay. Is that a record that's in your possession?

MS. SEGAL:

In the office, correct.

CHAIRWOMAN FLEMING:

Okay. Could you provide that for us?

MS. SEGAL:

Sure.

CHAIRWOMAN FLEMING:

Thank you. And is there -- you had said that Bureau Chiefs are no longer listed as employees who are required to file an FDS, right?

MR. GROSS:

Yes.

CHAIRWOMAN FLEMING:

And that's as of 2015. So 2015 going forward, you were informed by District Attorney Spota that his business -- his Bureau Chiefs would not be filing.

MS. SPAHR:

We were -- it's the reverse of that; the list of required filers no longer included the regular Bureau Chiefs. That's all included in the annual report, the specifics of that.

CHAIRWOMAN FLEMING:

So it wasn't as though Mr. Prudenti was specifically excepted.

MS. SPAHR:

Not at all.

MS. SEGAL:

Not at all.

CHAIRWOMAN FLEMING:

It was a list in which none of the Bureau Chiefs were included.

MS. SPAHR:

I'm saying none, there may have been supervisory Bureau Chiefs, but all the specifics of those are in --

CHAIRWOMAN FLEMING:

And was there any change that you're aware of in 2015 with regard to the law or the policy role of those Bureau Chiefs? In other words, I'm asking this because it appears that prior to 2015 there was a determination by Mr. Spota that they should file, and subsequent to 2015 no longer -- you know, I guess he no longer had that opinion. And I'm just wondering if you're aware of any policy change or legal change that would have prompted him to put them in a new category.

MS. SPAHR:

No, but we had been engaged in ongoing discussions with all department heads asking them to review who was filing, and in some cases hoping that they would increase the number of people who would be filing.

CHAIRWOMAN FLEMING:

Understood.

MS. SPAHR:

So, it was part of that.

CHAIRWOMAN FLEMING:

That's helpful to know, thank you. And Rob, did you want to ask any further questions?

LEG. TROTТА:

I don't, but Rob does.

CHAIRWOMAN FLEMING:

Oh, go ahead.

D.P.O. CALARCO:

You mentioned a number of times that you need more staff.

MS. SPAHR:

Yes.

D.P.O. CALARCO:

I can appreciate that. Did you submit for more staff when you submitted your requested budget to the County Executive in his preparing his budget?

MS. SPAHR:

Yes.

D.P.O. CALARCO:

Because it doesn't reflect that in his budget --

MS. SEGAL:

Yes.

D.P.O. CALARCO:

-- as a requested item.

MS. SEGAL:

That's correct. And the Legislative Budget Review Office that are assigned to us did inform us that he was correcting that in his submission because it was unclear to him why, in the submission that I guess was first put forth by the County Executive's Office, that this additional staff was not reflected but the increase in salary was reflected erroneously without matching up to the staff requested. So he said he was going to correct it in the submission from his end.

D.P.O. CALARCO:

Very good. Thank you.

LEG. TROTТА:

Just, I want to understand the investigative process a little bit better. Hypothetically, if there's a District Attorney who's renting his car and he submitted that on his form, that he has a car that he rents, and he says he makes whatever the figure was and you heard of an allegation that he was renting to a defense attorney; would you continue the investigation?

MR. GROSS:

It's not a matter of heard it. The Board would undertake that in review and could make a determination for a self-initiated complaint, yes.

MS. SEGAL:

And just so it's clear to everyone here, the Board does not wait, with respect to outside employment, for any type of referral or any type of a --

LEG. TROTТА:

No, I'm saying if you got a complaint that this guy was renting his car and you looked on his disclosure form and it said, *Yes, I rent my car*; would you further an investigation?

MS. SPAHR:

Depending on the circumstances. It hopefully --

MR. GROSS:

I mean, the fact that he rents his car --

LEG. TROTТА:

And he's claiming it, he's saying *I'm doing it*.

MR. GROSS:

I'm not sure that would rise to the level of an investigation, but the question is to whom?

LEG. TROTТА:

Exactly. Well, now that's my next question, is now he's renting it to defense lawyers.

MS. SEGAL:

Well, here's the thing. The problem that I have with this conversation is that you're presuming that a review wouldn't have occurred before then. The Board has a resolution in place for reviewing outside employment, and any outside employment that comes into our office was first marked and confirmed with the department head that they are aware of it.

LEG. TROTТА:

Well, he wouldn't say *I'm renting it to District Attorneys*.

MS. SEGAL:

It doesn't matter. Anything reported in the outside income box --

LEG. TROTТА:

Okay. Okay.

MS. SEGAL:

-- is then confirmed with the department head. If they don't have approval yet from the department head, the Board requires them to obtain approval.

LEG. TROTТА:

By department head, by like Spota?

MS. SEGAL:

Whoever the department head is to them.

LEG. TROTТА:

Okay.

MS. SEGAL:

And then we require the County SOP outside employment form or other such permission by the department head --

LEG. TROTТА:

Okay.

MS. SEGAL:

-- to be submitted to the Board for their review then of a potential conflict of interest.

MR. GROSS:

If it helps, I can certainly assure you, and I can't reveal, but there are a number of investigations currently ongoing based on information other than through an official complaint that have become very serious.

LEG. TROTТА:

Good.

CHAIRWOMAN FLEMING:

So, it is. I mean, this this is very, very serious stuff and we really appreciate your care and your being here. We are going to get a decision from Judge Spanelli.

MR. NOLAN:

Santorelli.

CHAIRWOMAN FLEMING:

Santorelli, sorry, in the future. So we have a regular Ways & Means Committee meeting. I know you all are devoted, but I think it would be very important for two reasons for you to be able to come back, and we'll try to get you out of there quickly. One being we'll have the document, we hope, by then, at least redacted. And then secondly, I think Mr. Calarco's questions with regard to the justification for the decision not to pursue the County Executive's complaint are extremely important, but we are out of time with regard to having a quorum here in this committee. So I'll be issuing another letter. I do appreciate your time. I look forward to, you know, having an opportunity to review all this as a committee, take a hard look at it and we'll resume for a brief inquiry at the next Ways & Means Committee.

MR. GROSS:

Is there a date for that?

CHAIRWOMAN FLEMING:

Yes, two seconds. Liz, when is the next Ways & Means Committee?

MS. SPAHR:

Madam Chair, while you're checking that date, if I could just say for the record, the items that I am submitting to you are the Board's Annual Reports for 2012, 2013, 2014 and 2015. They contain all of the Board's procedures that we've talked about, resolutions, adoptions that we've talked about, our recommendations, our budget requests and a whole host of other materials. I'm also submitting a copy of the Memorandum of Understanding between the Law Department and the Board of Ethics, and also George Nolan was copied on it, with respect to representation of the Board, who would be handling what. And it's in that item -- this is dated July 11th, 2013, and Item 7 is the item that refers specifically to the Board needing to appoint a FOIL officer, the Director serving as the Appeals Officer and Article 78 litigation being handled by Board's Counsel.

CHAIRWOMAN FLEMING:

Very good.

MS. SPAHR:

It reflects other matters as well.

CHAIRWOMAN FLEMING:

Sounds great. And we do have a few other documents that I mentioned earlier, just to wrap up, that we need from you before November 17th. And I guess because we're both former ADAs, we're paying attention to the record here; I have to note that two of our committee members had excused absences today -- I should have noted it prior -- Legislator Cilmi and --

LEG. HAHN:

Kate Browning.

CHAIRWOMAN FLEMING:

Legislator Browning.

MS. SEGAL:

And Chair Fleming?

CHAIRWOMAN FLEMING:

Yes?

MS. SEGAL:

Just so it's clear, November 17th we are -- we do have a scheduled hearing coming up that may be adjourned -- not adjourned, but continued throughout that week. So if I am in a board hearing, I will not be here.

CHAIRWOMAN FLEMING:

Oh, I'm sorry. So you have a direct scheduling conflict at 12:30, November 17th?

MS. SEGAL:

I'm telling you currently we have a hearing scheduled the week prior, so if it is continued over, based on the Judicial Hearing Officer and the prosecuting attorney, it --

CHAIRWOMAN FLEMING:

All right. Just let us know, if you would, and we'd appreciate it if you make the effort.

MS. SEGAL:

Sure. And is this is a special meeting or that's a regularly scheduled meeting?

CHAIRWOMAN FLEMING:

Nope, that's our regular scheduled Ways & Means.

MS. SEGAL:

Okay. Thank you..

CHAIRWOMAN FLEMING:

It's just to do some of this clean-up.

MS. SEGAL:

Okay.

MR. GROSS:

It should be 12:30, did you say?

CHAIRWOMAN FLEMING:

12:30, yes.

If there are no further matters, I thank you very much and we are adjourned.

(*The meeting was adjourned at 2:21 PM*)