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Office of Special Counsel Reports & Scott Bloch Issues [14]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	[Questions - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
002	Letter	[E-mail - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
003	Letter	[E-mail] - To: Randy Falco - From: Tom Davis	1	07/19/2007	P6/b6;
004	Letter	[E-mail - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
005	Letter	[Questions - page 2] - To: Scott Bloch - From: Tom Davis	1	07/20/2007	P6/b6;
006	Letter	[E-mail] - To: Randy Falco - From: Tom Davis	1	07/19/2007	P6/b6;

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [14]

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11294

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
007	Report	Report of Prohibited Political Activity under the Hatch Act... [with attachments]	59	05/18/2007	P6/b6; b7c;
008	Report	Analysis of Disclosures, Agency Investigation and Report...	6	N.D.	P6/b6; b7c;
009	Report	[Report of Investigation]	12	N.D.	P6/b6; b7c;
010	Report	[Rebuttal Letter]	2	N.D.	P6/b6; b7c;
011	Letter	OSC File No. DI-06-1236 [with attachment]	5	12/27/2006	P6/b6; b7c;
012	Letter	OSC File No. DI-06-1237 - To: Karen Gorman	1	12/04/2006	P6/b6; b7c;

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013	Report	Analysis of Disclosures, Agency Investigation and Report...	5	05/24/2007	P6/b6; b7c;
014	Letter	OSC File No. DI-06-0354 - To: Scott Bloch - From: Michael Jackson	6	01/17/2007	P6/b6; b7c;
015	Letter	OSC File No. DI-06-0354 - To: Jacob Briem	4	01/27/2007	P6/b6; b7c;
016	Letter	[Letter] - To: Fred Fielding - From: Scott Bloch	2	05/30/2007	P6/b6;

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THE WHITE HOUSE

FFF -

Attached are two letters from
Tom Davis to Scott Bloch
regarding Lurita Doan:

- (1) the first letter asks Bloch
to produce emails in his
AOL acct relating to Doan;
- (2) the second letter asks
pointed questions about his
investigation of Doan.

Davis also sent a letter
to AOL to preserve docs.

Ken

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July 20, 2007

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at last week's Committee hearing examining the U.S. Office of Special Counsel ("OSC"). The hearing raised numerous questions. As you may recall, you committed to answer the Committee's questions posed to you in writing. Pending your written response, the official hearing record from the July 12, 2007 Committee hearing will remain open.

1. At the hearing, the Ranking Member disclosed an e-mail apparently from your personal account, dated Tuesday, June 19, 2007 at 11:52 a.m. That e-mail ("the June 19 e-mail") discusses official business relating to the agency you head the OSC. The e-mail discusses OSC's reauthorization hearing, disparages an individual under investigation by OSC and two Members of the U.S. House of Representatives with oversight responsibility for your agency.
 - a. Please identify all e-mail communications sent from a non-governmental account controlled by you since January 26, 2007, including but not limited to the above-listed AOL account, where you discuss official agency business, including those e-mails where you name individuals currently under investigation by your agency or Members of the U.S. Congress. When identifying all e-mail communications, we ask you to list the account the e-mail was sent on, the date, the time, the subject, and all individuals named in the text of the e-mail.
2. Your location at the time could corroborate whether the June 19 e-mail reflects the use of nongovernmental e-mail systems to conduct official business. At the hearing, Rep. Issa asked you where you were on June 19, 2007 at 11:52 a.m. You refused to answer.

- a. Please explain the basis for your refusal?
 - b. Rep. Issa asked you to determine the answer to this question and notify the Committee. Have you?
 - c. Where were you on June 19, 2007 at 11:52 a.m.?
 - d. Was government-supplied computer equipment used in the composition or transmission of the e-mail message you sent on June 19, 2007 at 11:52 a.m. on the (b)(6) account?
3. At the hearing, Committee members expressed their concern to you about the repeated disparagement of Administrator of General Services Lurita Doan. As they explained at the hearing, your staff disparaged her at an April 26, 2007 Congressional briefing and at a May 2, 2007 social event. You conceded that these comments were inappropriate, presumably because they prejudice the subject of your investigation and suggest bias by the agency against the subject. Moreover, you reinforced that sense of bias by personally disparaging her in your June 19 e-mail.
 - a. What have you done to remedy this situation?
 - b. What do you plan to do to restore confidence in your agency's broken investigative process?
4. The improper disclosure of an unpublished and unfinished OSC report on GSA Administrator Lurita Doan prejudiced her ability to respond effectively and, again, suggests bias by the agency. A report that can withstand scrutiny need not be prematurely disclosed to the press for political or public relations advantage. OSC Communications Director James Mitchell acknowledged in a telephone conversation with our staff that the source of this leak could only have been your agency and that he would make sure that you understood that. He further advised that OSC would not make any internal inquiry about it because leak investigations never go anywhere.

At our hearing, you provided a less than clear explanation of your understanding of this leak, including an invocation of your First Amendment right to free speech and the power to disclose information if it is in the public interest under your regulations. Your testimony about the leak of the draft report dated May 17, 2007 was not credible. Indeed, it may have been deliberately false.

- a. Prior to the hearing did Mr. Mitchell discuss with you the disclosure of the May 17 draft of the Doan Report?

- b. Did he tell you that the disclosure could only have come from within the agency?
 - c. Did you tell him that you did not believe that?
 - d. Do you acknowledge that the *Washington Post* published a correction that it used a May 17 draft and not the final report that was sent to Doan?
 - e. If not, please explain the basis for your refusal to acknowledge that such a correction was published in the *Washington Post*.
 - f. Do you now acknowledge that the disclosure of the May 17 draft could only have come from your office?
 - g. If not, please explain the basis for any "belief" that the May 17 draft could have come from somewhere else.
 - h. Please explain the basis for your belief you have personal First Amendment rights in connection with your leak of the May 17 draft report on Lurita Doan.
 - i. Please explain how it was in the public interest to release the unpublished and unfinished draft May 17 report on the Administrator of General Services Lurita Doan.
5. During our examination of your agency's handling of the Lurita Doan matter, we learned the Administrator -- the target of your investigation -- was not permitted to see interview or deposition transcripts of witnesses against her.
- a. Is this true?
 - b. If so, the procedural protections afforded to targets of OSC investigations appear to be lacking. Would you support legislation ensuring that targets of OSC investigations are able to have access to such transcripts?
 - c. What types of additional due process rights would you support?
6. In response to questions from Rep. Issa relating to the Report of Prohibited Political Activity (Lurita A. Doan), you repeatedly advised Rep. Issa that only you have seen the entire Doan file. Amplifying your comments, you told Mr. Issa that he has not seen the witness transcripts and complete documentary record. The disclosure of confidential evidence that would be material to your report but that was not in the report raises serious ethical questions.
- a. Please explain why evidence that you claim to be material to your report was not included in your report.

- b. Please provide the Committee with any ethical standard that would permit the disclosure of such evidence.
 - c. If you claim that public disclosure of confidential evidence not included in your report is in the "public interest" under your regulations, please explain how such a disclosure is in the public interest if it was not in the public interest to put it in your report.
- 7. As an "independent" and "nonpartisan" federal agency, OSC officials have an obligation to conduct themselves professionally. On April 27, 2007 appearing on C-SPAN you said "our guide is the law, our lodestar are facts and evidence." You said "we make sure we read the case law to make sure we know what we are talking about." "Federal Courts and the MSPB tell us if we are right or wrong." Your Doan report relies on very few MSPB or federal court decisions.
 - a. Please identify all cases that would support the conclusion that the question "How can we help our candidates" constitutes a "commit[ment]" of agency resources to help Republican candidates.
- 8. In your May 18, 2007 Report you needlessly identify GSA employees by name. Surely you could have redacted these individual names.
 - a. Why did you fail to redact these names?
 - b. The publication of individual names in situations like this can lead to unfair consequences for these people. Do you agree?
 - c. Isn't this a terrible practice for the agency that is supposed to be protecting federal employees?
 - d. The May 17 draft of the report did not include the names, suggesting that the disclosure of the draft was part of a deliberate strategy to attack the Administrator of General Services but protect the agency from claims that it violated the Privacy Act. Why did the May 17 draft not include the names when the final version did?
- 9. When lawyers present information to a court they have a responsibility to be true to the evidence. There is a discipline required for preparing court papers. This includes quoting the actual words witnesses said, and citing the precise page number from the deposition transcript where you found those words. These practices establish credibility and demonstrate methodical, unimpeachable legal analysis.
 - a. Why do you eschew this practice in your Report on Prohibited Activity (Lurita A. Doan)?

- b. You do not quote witnesses interviewed by OSC. You do not use footnotes to identify the transcript pages the information was found in the record. Please explain.
- 10. You have presented no evidence to show anyone within GSA acted on statements you attribute to Doan.
 - a. If her actions were coercive as you say they were, what did she coerce?
 - b. What candidate or election would have been supported by the attendance of the President at an event in San Francisco, one subject of discussion following Doan's remark?
 - c. If you are able to identify such a candidate, why did you not identify that candidate or election in your report?
 - d. What candidate or election would have been supported by the attendance of Senator Martinez (who is not up for election in 2008) at an event in Florida, another subject of discussion that followed Doan's remark?
 - e. If you are able to identify one, please explain why you did not identify that candidate or election in your report.
- 11. The statements you attribute to Doan are ambiguous. She may have said "what can we do to help," or "what can we do to help our guys," or "help our candidates."
 - a. As her statements were addressed to Scott Jennings, couldn't this mean what can we do legally, and within the dictates of the Hatch Act to help our candidates?
 - b. Couldn't this have meant what can we do after work, on our own time, to help the administration?
 - c. Why did you fail to consider these alternative meanings to ambiguous statements?
 - d. The ambiguous statements you attribute to her may have been rhetorical. Why did you rule this out?
- 12. Your Report fails to identify the appropriate standard of evidence for analyzing whether Doan violated the Hatch Act.
 - a. What standard of evidence did you use?

- b. Why did you not set forth in the report the standard of evidence that you used?
- c. What standard of evidence should the President use in analyzing the materials you submitted -- preponderance of the evidence or substantial evidence? Some other standard?
- d. Why didn't you tell the President?
- e. Which standard of evidence is used before the Merit Systems Protection Board?
- f. If the standard you are asking the President to use is different from that which the Merit Systems Protection Board would use, please explain.

13. In Special Counsel v. Acconcia, No. CB-1216-06-0007-T-1, 2007 M.S.P.B. LEXIS 404 (Feb. 26, 2007), the respondent was charged with soliciting a political contribution from a subordinate employee, by inviting that subordinate employee to a fundraiser for a candidate for partisan political office, and by engaging in political activity while in a government building. The MSPB penalty was 45 days.

In Special Counsel v. Collier, 101 M.S.P.R. 391 (2006), the respondent -- a USDA veterinarian -- was found to have violated the Hatch Act for soliciting political contributions for a county commissioners race in North Carolina. The penalty was 30 days.

In Special Counsel v. McEntee, No. CB-1216-02-0007-T-1, 2003 M.S.P.B. LEXIS 560 (Sept. 8, 2003), the respondent was a candidate for election while employed at the FAA. The MSPB found removal from office at the FAA was deemed too harsh. The penalty was 30 days.

In Special Counsel v. Rivera, 61 M.S.P.R. 440 (1994), the respondent a GS-13 attorney with the SEC was found to have sent fundraising letters at work inviting people to a Colorado Hispanic Bar Association fundraiser for Roger Candelaria who was running for District Attorney in southern Colorado. He was warned not to continue this by his supervisor, but he continued. The penalty was 60 days.

- a. In your Doan report, why didn't you cite any of these cases as precedent for your recommended punishment?
- b. You recommend the President punish Doan to the fullest extent, i.e. removal from office. What cases can you refer us to show that such a recommendation is consistent with MSPB and federal court case law?

- c. If you are able to cite such precedent, please explain why you did not cite it in your report.
 - d. With so much case law counseling against removal from office, does the Doan matter raise special considerations that have not heretofore been considered by the MSPB?
- 14. Solicitation cases warranting removal "have involved the coercion of subordinate employees, the most pernicious of the political activities prohibited by the Hatch Act." Special Counsel v. Malone, 84 M.S.P.R. 342, 366 (1999). The Merit System Protection Board (MSPB) has summarized that generally removal is only called for when the violation "occurred under circumstances demonstrating a deliberate disregard of the Act." Malone at 364-5. According to Malone, the MSPB generally considers six factors as aggravating or mitigating: 1) the nature of the offense and the extent of the employee's participation; 2) the employee's motive and intent; 3) whether the employee received the advice of counsel regarding the activities; 4) whether the employee ceased the activities; 5) the employee's past employment record; and 6) the political coloring of the employee's activities. Malone at 364, citing Special Counsel v. Riviera, 61 M.S.P.R. 440, 444 (1994).
 - a. Why did OSC fail to analyze the six factors identified in Malone?
 - b. In Doan's case, it appears that five of these factors are mitigating. If you disagree, why?
- 15. At the July 12 hearing, you claimed that lack of cooperation could be considered an aggravating factor and suggested that Doan's conduct during the investigation was such a factor. This again raises serious ethical questions regarding the disclosure of a material aspect of your investigation that had an impact on the result that was not explained in the report itself.
 - a. Please cite the MSPB or federal court precedent for your claim that that lack of cooperation can be an aggravating factor in an OSH Hatch Act investigation.
 - b. Please explain why, if lack of cooperation was an aggravating factor, you did not include any findings of fact or legal conclusions in your report that such aggravation influenced the results of the investigation.
 - c. Please explain what ethical standard permits you to make any public disclosure of considerations that influenced your decision that are not included in your decision.

Scott J. Bloch
July 20, 2007
Page 8

Please respond no later than August 3, 2007. If you have any questions regarding this request, please contact the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Davis". The signature is fluid and cursive, with the first name "Tom" being more prominent than the last name "Davis".

Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

HENRY A. WAXMAN, CALIFORNIA
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The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at the Committee's hearing examining the U.S. Office of Special Counsel on July 12, 2007. At that hearing, Committee members asked that you produce e-mails sent on your personal e-mail account that related to official business. This letter renews that request.

The use of nongovernmental e-mail accounts to conduct official business is of some importance to this Committee. As you know, the Committee is currently investigating whether official business was conducted improperly on nongovernmental e-mail accounts by executive branch officials. Records of official business conducted using private e-mail accounts are at risk of not being preserved in accordance with the Federal Records Act and not being accessible to the public through the Freedom of Information Act and other public access and open government requirements.

In addition, the e-mail disclosed at the hearing and others the Committee is seeking may implicate federal law that prohibits executive branch officials from engaging in lobbying. As you may know, the Committee is already investigating the Department of Transportation for possible unlawful lobbying.

The content and distribution of the e-mail disclosed at the hearing raise these questions. That e-mail was sent to an undisclosed recipient list at 11:52 am on Tuesday, June 19, 2007, from a nongovernmental e-mail account maintained by AOL. Your distribution list for this mass e-mail was large enough that a copy was forwarded to our staff shortly after it was sent.

In the e-mail communication you discuss official governmental business including your agency's reauthorization hearing. You comment inappropriately about the subject of an Office of Special Counsel investigation. You speak disparagingly of former President Clinton, Administrator of General Services Lurita Doan, and two Members of

Scott J. Bloch
July 20, 2007
Page 2

the U.S. House of Representatives. In addition, you distributed news articles on these subjects attached to the e-mail.

To determine whether you were conducting official business through a personal e-mail account or engaging in prohibited lobbying, the Committee will need to examine this and other e-mails regarding similar subjects and obtain some additional information. Accordingly, this letter renews the Committee's request that you produce all e-mail records from your nongovernmental e-mail accounts, including the AOL account with the address (b)(6) between January 26, 2007 and the present where you:

- a) discuss official business including anything related to Hatch Act violations and Hatch Act investigations;
- b) use the name Lurita Doan;
- c) use the name of any individual currently under investigation by your agency; or
- d) use the name of any government official, including but not limited to Members of the United States Congress.

We also request that you provide the Committee with a list of the names and e-mail addresses of the recipients of the June 19 e-mail and all other e-mail produced in response to this request. The recipient list is just as important as the e-mail content in determining whether you conducted official business or engaged in prohibited lobbying.

In addition to producing all e-mail records responsive to the aforementioned request, the Committee directs you to preserve all e-mail records from all nongovernmental and official e-mail accounts you use or have used since January 26, 2007. As these e-mails may be relevant to congressional investigations, Freedom of Information Act requests, and the Federal Records Act, the Committee also directs you to adequately protect and safeguard these records from destruction or tampering.

We appreciate your continued cooperation. If you have any questions regarding this request, please contact the Committee Staff. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

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BILL SALI, IDAHO

July 19, 2007

Mr. Randy Falco
Chairman and Chief Executive Officer
AOL LLC
22000 AOL Way
Dulles, VA 20166

Dear Mr. Falco:

The purpose of this letter is to direct AOL to preserve and protect all e-mail records associated with the account (b)(6) and any other e-mail account assigned to Scott J. Bloch.

The Committee on Oversight and Government Reform is currently investigating whether the use of this account by a federal governmental official may have violated laws relating to the Federal Records Act and the Freedom of Information Act. Indeed if official government business was conducted on this e-mail account, these records are government property.

Should you have any questions regarding this request, please contact our staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman
The Honorable Scott J. Bloch

Bakke, Mary Beth

From: Flood, Emmet T.
Sent: Monday, July 23, 2007 5:27 PM
To: Kaplan, Joel; Jordan, Myriah L.; Gillespie, Edward W.; Wolff, Candida P.; Frech, Christopher W.; 'krove@who.eop.gov'; Stanzel, Scott M.; Fielding, Fred F.
Cc: Bakke, Mary Beth
Subject: Letters from Cong Davis re Scott Bloch (Lurita Doan related)
Attachments: Scann001 2.pdf; Scann001 (6).pdf; Scann001 (7).pdf

7/23/2007

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July 20, 2007

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BIL SAUL, IDAHO

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at the Committee's hearing examining the U.S. Office of Special Counsel on July 12, 2007. At that hearing, Committee members asked that you produce e-mails sent on your personal e-mail account that related to official business. This letter renews that request.

The use of nongovernmental e-mail accounts to conduct official business is of some importance to this Committee. As you know, the Committee is currently investigating whether official business was conducted improperly on nongovernmental e-mail accounts by executive branch officials. Records of official business conducted using private e-mail accounts are at risk of not being preserved in accordance with the Federal Records Act and not being accessible to the public through the Freedom of Information Act and other public access and open government requirements.

In addition, the e-mail disclosed at the hearing and others the Committee is seeking may implicate federal law that prohibits executive branch officials from engaging in lobbying. As you may know, the Committee is already investigating the Department of Transportation for possible unlawful lobbying.

The content and distribution of the e-mail disclosed at the hearing raise these questions. That e-mail was sent to an undisclosed recipient list at 11:52 am on Tuesday, June 19, 2007, from a nongovernmental e-mail account maintained by AOL. Your distribution list for this mass e-mail was large enough that a copy was forwarded to our staff shortly after it was sent.

In the e-mail communication you discuss official governmental business including your agency's reauthorization hearing. You comment inappropriately about the subject of an Office of Special Counsel investigation. You speak disparagingly of former President Clinton, Administrator of General Services Lurita Doan, and two Members of

Scott J. Bloch
July 20, 2007
Page 2

the U.S. House of Representatives. In addition, you distributed news articles on these subjects attached to the e-mail.

To determine whether you were conducting official business through a personal e-mail account or engaging in prohibited lobbying, the Committee will need to examine this and other e-mails regarding similar subjects and obtain some additional information. Accordingly, this letter renews the Committee's request that you produce all e-mail records from your nongovernmental e-mail accounts, including the AOL account with the address [redacted] (b)(6) between January 26, 2007 and the present where you:

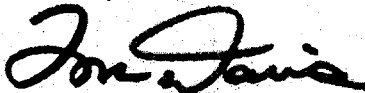
- a) discuss official business including anything related to Hatch Act violations and Hatch Act investigations;
- b) use the name Lurita Doan;
- c) use the name of any individual currently under investigation by your agency; or
- d) use the name of any government official, including but not limited to Members of the United States Congress.

We also request that you provide the Committee with a list of the names and e-mail addresses of the recipients of the June 19 e-mail and all other e-mail produced in response to this request. The recipient list is just as important as the e-mail content in determining whether you conducted official business or engaged in prohibited lobbying.

In addition to producing all e-mail records responsive to the aforementioned request, the Committee directs you to preserve all e-mail records from all nongovernmental and official e-mail accounts you use or have used since January 26, 2007. As these e-mails may be relevant to congressional investigations, Freedom of Information Act requests, and the Federal Records Act, the Committee also directs you to adequately protect and safeguard these records from destruction or tampering.

We appreciate your continued cooperation. If you have any questions regarding this request, please contact the Committee Staff. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

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CHAIRMAN

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July 20, 2007

The Honorable Scott J. Bloch
U.S. Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W.
Washington, DC 20036

Dear Mr. Bloch:

Thank you for your testimony at last week's Committee hearing examining the U.S. Office of Special Counsel ("OSC"). The hearing raised numerous questions. As you may recall, you committed to answer the Committee's questions posed to you in writing. Pending your written response, the official hearing record from the July 12, 2007 Committee hearing will remain open.

1. At the hearing, the Ranking Member disclosed an e-mail apparently from your personal account, dated Tuesday, June 19, 2007 at 11:52 a.m. That e-mail ("the June 19 e-mail") discusses official business relating to the agency you head the OSC. The e-mail discusses OSC's reauthorization hearing, disparages an individual under investigation by OSC and two Members of the U.S. House of Representatives with oversight responsibility for your agency.
 - a. Please identify all e-mail communications sent from a non-governmental account controlled by you since January 26, 2007, including but not limited to the above-listed AOL account, where you discuss official agency business, including those e-mails where you name individuals currently under investigation by your agency or Members of the U.S. Congress. When identifying all e-mail communications, we ask you to list the account the e-mail was sent on, the date, the time, the subject, and all individuals named in the text of the e-mail.
2. Your location at the time could corroborate whether the June 19 e-mail reflects the use of nongovernmental e-mail systems to conduct official business. At the hearing, Rep. Issa asked you where you were on June 19, 2007 at 11:52 a.m. You refused to answer.

- a. Please explain the basis for your refusal?
- b. Rep. Issa asked you to determine the answer to this question and notify the Committee. Have you?
- c. Where were you on June 19, 2007 at 11:52 a.m.?
- d. Was government-supplied computer equipment used in the composition or transmission of the e-mail message you sent on June 19, 2007 at 11:52 a.m. on the (b)(6) account?

3. At the hearing, Committee members expressed their concern to you about the repeated disparagement of Administrator of General Services Lurita Doan. As they explained at the hearing, your staff disparaged her at an April 26, 2007 Congressional briefing and at a May 2, 2007 social event. You conceded that these comments were inappropriate, presumably because they prejudice the subject of your investigation and suggest bias by the agency against the subject. Moreover, you reinforced that sense of bias by personally disparaging her in your June 19 e-mail.

- a. What have you done to remedy this situation?
- b. What do you plan to do to restore confidence in your agency's broken investigative process?

4. The improper disclosure of an unpublished and unfinished OSC report on GSA Administrator Lurita Doan prejudiced her ability to respond effectively and, again, suggests bias by the agency. A report that can withstand scrutiny need not be prematurely disclosed to the press for political or public relations advantage. OSC Communications Director James Mitchell acknowledged in a telephone conversation with our staff that the source of this leak could only have been your agency and that he would make sure that you understood that. He further advised that OSC would not make any internal inquiry about it because leak investigations never go anywhere.

At our hearing, you provided a less than clear explanation of your understanding of this leak, including an invocation of your First Amendment right to free speech and the power to disclose information if it is in the public interest under your regulations. Your testimony about the leak of the draft report dated May 17, 2007 was not credible. Indeed, it may have been deliberately false.

- a. Prior to the hearing did Mr. Mitchell discuss with you the disclosure of the May 17 draft of the Doan Report?

- b. Did he tell you that the disclosure could only have come from within the agency?
 - c. Did you tell him that you did not believe that?
 - d. Do you acknowledge that the *Washington Post* published a correction that it used a May 17 draft and not the final report that was sent to Doan?
 - e. If not, please explain the basis for your refusal to acknowledge that such a correction was published in the *Washington Post*.
 - f. Do you now acknowledge that the disclosure of the May 17 draft could only have come from your office?
 - g. If not, please explain the basis for any "belief" that the May 17 draft could have come from somewhere else.
 - h. Please explain the basis for your belief you have personal First Amendment rights in connection with your leak of the May 17 draft report on Lurita Doan.
 - i. Please explain how it was in the public interest to release the unpublished and unfinished draft May 17 report on the Administrator of General Services Lurita Doan.
5. During our examination of your agency's handling of the Lurita Doan matter, we learned the Administrator -- the target of your investigation -- was not permitted to see interview or deposition transcripts of witnesses against her.
- a. Is this true?
 - b. If so, the procedural protections afforded to targets of OSC investigations appear to be lacking. Would you support legislation ensuring that targets of OSC investigations are able to have access to such transcripts?
 - c. What types of additional due process rights would you support?
6. In response to questions from Rep. Issa relating to the Report of Prohibited Political Activity (Lurita A. Doan), you repeatedly advised Rep. Issa that only you have seen the entire Doan file. Amplifying your comments, you told Mr. Issa that he has not seen the witness transcripts and complete documentary record. The disclosure of confidential evidence that would be material to your report but that was not in the report raises serious ethical questions.
- a. Please explain why evidence that you claim to be material to your report was not included in your report.

- b. Please provide the Committee with any ethical standard that would permit the disclosure of such evidence.
 - c. If you claim that public disclosure of confidential evidence not included in your report is in the "public interest" under your regulations, please explain how such a disclosure is in the public interest if it was not in the public interest to put it in your report.
- 7. As an "independent" and "nonpartisan" federal agency, OSC officials have an obligation to conduct themselves professionally. On April 27, 2007 appearing on C-SPAN you said "our guide is the law, our lodestar are facts and evidence." You said "we make sure we read the case law to make sure we know what we are talking about." "Federal Courts and the MSPB tell us if we are right or wrong." Your Doan report relies on very few MSPB or federal court decisions.
 - a. Please identify all cases that would support the conclusion that the question "How can we help our candidates" constitutes a "commit[ment]" of agency resources to help Republican candidates.
- 8. In your May 18, 2007 Report you needlessly identify GSA employees by name. Surely you could have redacted these individual names.
 - a. Why did you fail to redact these names?
 - b. The publication of individual names in situations like this can lead to unfair consequences for these people. Do you agree?
 - c. Isn't this a terrible practice for the agency that is supposed to be protecting federal employees?
 - d. The May 17 draft of the report did not include the names, suggesting that the disclosure of the draft was part of a deliberate strategy to attack the Administrator of General Services but protect the agency from claims that it violated the Privacy Act. Why did the May 17 draft not include the names when the final version did?
- 9. When lawyers present information to a court they have a responsibility to be true to the evidence. There is a discipline required for preparing court papers. This includes quoting the actual words witnesses said, and citing the precise page number from the deposition transcript where you found those words. These practices establish credibility and demonstrate methodical, unimpeachable legal analysis.
 - a. Why do you eschew this practice in your Report on Prohibited Activity (Lurita A. Doan)?

- b. You do not quote witnesses interviewed by OSC. You do not use footnotes to identify the transcript pages the information was found in the record. Please explain.
- 10. You have presented no evidence to show anyone within GSA acted on statements you attribute to Doan.
 - a. If her actions were coercive as you say they were, what did she coerce?
 - b. What candidate or election would have been supported by the attendance of the President at an event in San Francisco, one subject of discussion following Doan's remark?
 - c. If you are able to identify such a candidate, why did you not identify that candidate or election in your report?
 - d. What candidate or election would have been supported by the attendance of Senator Martinez (who is not up for election in 2008) at an event in Florida, another subject of discussion that followed Doan's remark?
 - e. If you are able to identify one, please explain why you did not identify that candidate or election in your report.
- 11. The statements you attribute to Doan are ambiguous. She may have said "what can we do to help," or "what can we do to help our guys," or "help our candidates."
 - a. As her statements were addressed to Scott Jennings, couldn't this mean what can we do legally, and within the dictates of the Hatch Act to help our candidates?
 - b. Couldn't this have meant what can we do after work, on our own time, to help the administration?
 - c. Why did you fail to consider these alternative meanings to ambiguous statements?
 - d. The ambiguous statements you attribute to her may have been rhetorical. Why did you rule this out?
- 12. Your Report fails to identify the appropriate standard of evidence for analyzing whether Doan violated the Hatch Act.
 - a. What standard of evidence did you use?

- b. Why did you not set forth in the report the standard of evidence that you used?
- c. What standard of evidence should the President use in analyzing the materials you submitted – preponderance of the evidence or substantial evidence? Some other standard?
- d. Why didn't you tell the President?
- e. Which standard of evidence is used before the Merit Systems Protection Board?
- f. If the standard you are asking the President to use is different from that which the Merit Systems Protection Board would use, please explain.

13. In Special Counsel v. Acconcia, No. CB-1216-06-0007-T-1, 2007 M.S.P.B. LEXIS 404 (Feb. 26, 2007), the respondent was charged with soliciting a political contribution from a subordinate employee, by inviting that subordinate employee to a fundraiser for a candidate for partisan political office, and by engaging in political activity while in a government building. The MSPB penalty was 45 days.

In Special Counsel v. Collier, 101 M.S.P.R. 391 (2006), the respondent -- a USDA veterinarian -- was found to have violated the Hatch Act for soliciting political contributions for a county commissioners race in North Carolina. The penalty was 30 days.

In Special Counsel v. McEntee, No. CB-1216-02-0007-T-1, 2003 M.S.P.B. LEXIS 560 (Sept. 8, 2003), the respondent was a candidate for election while employed at the FAA. The MSPB found removal from office at the FAA was deemed too harsh. The penalty was 30 days.

In Special Counsel v. Rivera, 61 M.S.P.R. 440 (1994), the respondent a GS-13 attorney with the SEC was found to have sent fundraising letters at work inviting people to a Colorado Hispanic Bar Association fundraiser for Roger Candelaria who was running for District Attorney in southern Colorado. He was warned not to continue this by his supervisor, but he continued. The penalty was 60 days.

- a. In your Doan report, why didn't you cite any of these cases as precedent for your recommended punishment?
- b. You recommend the President punish Doan to the fullest extent, i.e. removal from office. What cases can you refer us to show that such a recommendation is consistent with MSPB and federal court case law?

- c. If you are able to cite such precedent, please explain why you did not cite it in your report.
 - d. With so much case law counseling against removal from office, does the Doan matter raise special considerations that have not heretofore been considered by the MSPB?
- 14. Solicitation cases warranting removal "have involved the coercion of subordinate employees, the most pernicious of the political activities prohibited by the Hatch Act." Special Counsel v. Malone, 84 M.S.P.R. 342, 366 (1999). The Merit System Protection Board (MSPB) has summarized that generally removal is only called for when the violation "occurred under circumstances demonstrating a deliberate disregard of the Act." Malone at 364-5. According to Malone, the MSPB generally considers six factors as aggravating or mitigating: 1) the nature of the offense and the extent of the employee's participation; 2) the employee's motive and intent; 3) whether the employee received the advice of counsel regarding the activities; 4) whether the employee ceased the activities; 5) the employee's past employment record; and 6) the political coloring of the employee's activities. Malone at 364, citing Special Counsel v. Riviera, 61 M.S.P.R. 440, 444 (1994).
 - a. Why did OSC fail to analyze the six factors identified in Malone?
 - b. In Doan's case, it appears that five of these factors are mitigating. If you disagree, why?
- 15. At the July 12 hearing, you claimed that lack of cooperation could be considered an aggravating factor and suggested that Doan's conduct during the investigation was such a factor. This again raises serious ethical questions regarding the disclosure of a material aspect of your investigation that had an impact on the result that was not explained in the report itself.
 - a. Please cite the MSPB or federal court precedent for your claim that that lack of cooperation can be an aggravating factor in an OSH Hatch Act investigation.
 - b. Please explain why, if lack of cooperation was an aggravating factor, you did not include any findings of fact or legal conclusions in your report that such aggravation influenced the results of the investigation.
 - c. Please explain what ethical standard permits you to make any public disclosure of considerations that influenced your decision that are not included in your decision.

Scott J. Bloch
July 20, 2007
Page 8

Please respond no later than August 3, 2007. If you have any questions regarding this request, please contact the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Davis", written in a cursive style.

Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

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BILL SALI, IDAHO

July 19, 2007

Mr. Randy Falco
Chairman and Chief Executive Officer
AOL LLC
22000 AOL Way
Dulles, VA 20166

Dear Mr. Falco:

The purpose of this letter is to direct AOL to preserve and protect all e-mail records associated with the account (b)(6) and any other e-mail account assigned to Scott J. Bloch.

The Committee on Oversight and Government Reform is currently investigating whether the use of this account by a federal governmental official may have violated laws relating to the Federal Records Act and the Freedom of Information Act. Indeed if official government business was conducted on this e-mail account, these records are government property.

Should you have any questions regarding this request, please contact our staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Tom Davis
Ranking Member

cc: The Honorable Henry A. Waxman
The Honorable Scott J. Bloch



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Deputy Special Counsel

September 10, 2007

The Honorable Fred F. Fielding
White House Counsel
Executive Office of the President
1600 Pennsylvania Ave. NW
Washington, DC 20500

Re: OSC File No. HA-07-1741

Dear Mr. Fielding:

As you know, the United States Office of Special Counsel (OSC) currently is investigating allegations that several individuals currently and formerly employed by the White House Office of Political Affairs (OPA) violated the Hatch Act, 5 U.S.C. §§ 7321-7326, by engaging in activity related to certain presentations given to political and presidential appointees throughout the federal government. We appreciate the cooperation and information that your office previously has provided. At this time, we are asking for your further assistance with this matter.

Specifically, the Special Counsel, pursuant to the authority contained in 5 U.S.C. Secs. 1212, 1216 and 1303 and in Civil Service Rule 5.4 (5 C.F.R. § 5.4), requests that you furnish the following information on or before October 8, 2007:

1. Please identify each and every presentation or briefing given by any OPA employee or official to any federal employee or official that related to, concerned or mentioned any of the following: asset deployment; election results or predictions; election or campaign strategy; strengths and/or weaknesses of the Republican or Democratic Party; strengths and/or weaknesses of any candidate for partisan political office; seats targeted for takeover by the Republican Party; seats identified as needing to be defended from takeover by the Democratic Party; so-called "72-Hour campaigns;" or, any activity directed toward the success of the Republican Party and/or its candidates and/or the failure of the Democratic Party and/or its candidates. This request is limited to those briefings or presentations that were given on or after January 20, 2001.
2. For each presentation or briefing identified in response to question 1, please provide the following information:
 - a. the date and time of the presentation or briefing;
 - b. the location where the presentation or briefing was given;
 - c. the name(s) of the guest or featured speaker(s) at the presentation or briefing;
 - d. the name(s) of the individual(s) who requested the presentation or briefing;
 - e. the name(s) of the individual(s) who organized the presentation or briefing;
 - f. a list or description of individuals who were invited to attend the presentation or briefing;

The Deputy Special Counsel

- g. a list of individuals who attended the presentation or briefing;
 - h. the purpose of the presentation or briefing;
 - i. a copy of any agenda or outline for the presentation or briefing;
 - j. a copy of any PowerPoint or similar presentation used during the briefing and the name(s) of any person(s) who created or edited the presentation;
 - k. a copy of any notes, outline, talking points or similar document(s) used by the OPA employee or officer who conducted the presentation or briefing; and,
 - l. a copy of any document(s) distributed during the presentation or briefing.
3. With respect to each presentation or briefing identified in response to question 1, please identify each and every OPA officer and/or employee who attended, observed or was present during the presentation or briefing. For each individual, please provide the following information:
- a. name and the official title of the position(s) held within the OPA;
 - b. his or her dates of employment;
 - c. the appointment authority under which he or she was appointed to OPA;
 - d. whether the individual was a presenter, speaker or observer at the presentation or briefing;
 - e. his or her current or last known contact information, including address and telephone number;
 - f. a description of his or her duties; and,
 - g. a copy of his or her position description.
4. With respect to each presentation or briefing identified in response to question 1, did any present or former employee of the White House Counsel's Office review, comment, recommend or advise on the appropriateness or legality of giving or displaying the presentation or briefing? If yes, please provide the following information:
- a. the name(s) of the employee(s) who reviewed, commented, recommended, or advised on the appropriateness of giving the presentation or briefing;
 - b. current contact information for the employee;
 - c. a brief description of how the presentation or briefing came to the employee's attention;
 - d. any documents memorializing or making reference to the employee's review, comments, recommendation or advice concerning the appropriateness of the presentation or briefing; and,
 - e. a brief description of any and all actions taken in response to the employee's review, recommendation or advice concerning the presentation or briefing.
5. Please identify and provide copies of any and all documents related to, mentioning or referring to any of the briefings or presentations identified in response to question 1. Examples of documents requested include, but are not limited to: agendas, calendars, minutes, hand-outs, slides, notes, e-mails, and audio or video recordings. In searching for such documents, we request that each employee's search include, among other things, their desktop computers, laptop computers, personal digital assistants, thumb drives, government electronic mail account, Republican National Committee electronic mail account, "gwb43" electronic mail account or any other electronic mail account used to discuss the OPA presentations or 72 hour campaign efforts.

If any document is withheld for any reason, please: a) identify each document withheld; b) state the exemption or privilege claimed and any applicable statutory or

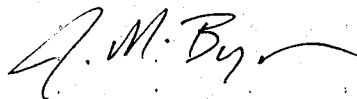
The Deputy Special Counsel

regulatory citations; and c) explain how disclosure would damage the interests protected by the claimed exemption or privilege.

The pertinent provisions of the statutes and of Civil Service Rule 5.4 under which this request is made are set forth on the last page of this form. The request is made for law enforcement purposes and in connection with an official investigation being conducted by the Office of Special Counsel.

Thank you for your assistance and cooperation with this matter. Please do not hesitate to contact me at (202) 254-3603 if you have any questions or concerns about this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. M. Byrne", with a long horizontal flourish extending to the right.

James M. Byrne
Deputy Special Counsel

Pertinent Provisions of Sections 1212, 1214, 1216 and 1303 of Title 5, United States Code

- Sec. 1212(b)(1): "The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence."
- Sec. 1214(a)(1)(A): "The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken."
- Sec. 1214(a)(5): "In addition to any authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken."
- Sec. 1216(a): "This subsection provides further that the Special Counsel shall investigate any allegation of certain prohibited political activities (Hatch Act), arbitrary or capricious withholding of information requested under the Freedom of Information Act (5 U.S. C. § 552), any activity prohibited by civil service law, rule or regulation, or involvement of any employee in discrimination found by any court or appropriate administrative authority."
- Sec. 1303: "The Office of Personnel Management, Merit Systems Protection Board, and the Special Counsel may investigate and report on matters concerning—
- (1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302(a) of this title; and
 - (2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

Civil Service Rule 5.4 (5 C.F.R. § 5.4) provides as follows:

"When required by the Office [of Personnel Management], the Merit Systems Protection Board, or the Special Counsel . . . or by authorized representatives of these bodies, agencies shall make available to them, or their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants and eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section."



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

www.osc.gov

The Special Counsel

May 18, 2007

The Honorable Lurita A. Doan
c/o Michael J. Nardotti, Jr.
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037-1350

A large handwritten checkmark in the right margin of the letter.

Via Hand Delivery and Facsimile (202) 457-6315

Re: OSC File No. HA-07-1160

Dear Madame Administrator:

As you know, the United States Office of Special Counsel received a referral from the General Services Administration's Office of the Inspector General concerning allegations that you engaged in political activities in violation of 5 U.S.C. § 7323(a) of the Hatch Act. Specifically, it was alleged that during a January 26, 2007, meeting held at the General Services Administration's headquarters, you violated the Hatch Act by soliciting your subordinate employees to participate in political activity.

The Office of Special Counsel has completed its investigation into the Hatch Act allegations, and as discussed in the enclosed Report of Prohibited Political Activity, I have determined that you violated the Hatch Act's prohibition against using your official authority or influence for the purpose of interfering with or affecting the result of an election when you solicited over thirty subordinate employees to engage in political activity. You have fourteen days from the date of this letter to provide the Office of Special Counsel with a response to the Report of Prohibited Political Activity.

In accordance with 5 U.S.C. § 1215(b), I will transmit any response you provide and the enclosed Report of Prohibited Political Activity to the President with my recommendation that the President take appropriate disciplinary action against you for your serious violation of the Hatch Act.

If you have any questions regarding this matter, you may contact James Byrne, Deputy Special Counsel at (202) 254-3600.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch
The Special Counsel

Enclosure

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Report of Prohibited Political Activity under the Hatch Act... [with attachments]	59	05/18/2007	P6/b6; b7c;

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COLLECTION:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [14]

FRC ID:

11294

OA Num.:

10821

NARA Num.:

10383

FOIA IDs and Segments:

2014-0210-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

- A. Closed by Executive Order 13526 governing access to national security information.
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Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

✓

The Special Counsel

May 10, 2007

The Honorable Fred F. Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-06-1236; DI-06-1237; DI-06-1253;
DI-06-1272; DI-06-1273; and DI-06-1286

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter, report, and comments to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott J. Bloch".

Scott J. Bloch

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

May 10, 2007

The President
The White House
Washington, D.C. 20500

Re: OSC File Nos. DI-06-1236; DI-06-1237; DI-06-1253;
DI-06-1272; DI-06-1273; and DI-06-1286

Dear Mr. President:

Passenger screening by U.S. Customs and Border Protection (CBP) is one line of defense in our national security protections, which can ill afford cutting of corners. I received disclosures from six Agricultural Specialists with the Department of Homeland Security (DHS), CBP, Sanford International Airport, Sanford, Florida. The whistleblowers, Selma Ocasio, Jose Vazquez-Quinones, William Errico, and three anonymous federal employees (Agricultural Specialists) alleged that they were instructed to enter into a CBP database false information concerning passenger screening. They believed that this practice constituted a violation of law, gross mismanagement, and a substantial and specific danger to public health and safety.

I required the Secretary, DHS, to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary, DHS, tasked CBP, Office of Internal Affairs (OIA), with investigating the allegations. The investigation was conducted by OIA, Investigative Operations Division (IOD). OSC received the agency's report dated October 31, 2006, and signed by DHS Deputy Secretary Michael Jackson.

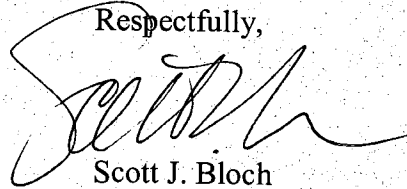
As discussed in the attached Analysis of Disclosures, the report partially substantiated the whistleblowers' allegations. The report reflects that personnel assigned to enter data were improperly directed to use default or generic data, and that authorized users were directed to enter data under another employee's user identification number and password. The agency has taken disciplinary and corrective action in response to the findings of violations of law. Three of the whistleblowers provided comments on the report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting to you the agency report and the whistleblowers' comments.

I have reviewed the original disclosures, the report, and the whistleblowers' comments. Based on that review, I have determined that the agency's report contains all of the information required by statute, and that its findings appear to be reasonable.

The President
Page 2

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the DHS report and the whistleblowers' comments to the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, and to the Chairman of the House Committee on Homeland Security. I have also filed a copy of the DHS report and the whistleblowers' comments in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Scott J. Bloch', written over the printed name.

Scott J. Bloch

Enclosures

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Analysis of Disclosures, Agency Investigation and Report...	6	N.D.	P6/b6; b7c;

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Office of Special Counsel Reports & Scott Bloch Issues [14]

FRC ID:

11294

OA Num.:

10821

NARA Num.:

10383

FOIA ID and Segment:

2014-0441-F

2014-0210-F

RESTRICTION CODES

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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Freedom of Information Act - [5 U.S.C. 552(b)]

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Records Not Subject to FOIA

Court Sealed - The document is withheld under a court seal and is not subject to the Freedom of Information Act.



Homeland Security

October 31, 2006

The Honorable Scott J. Bloch
Special Counsel
Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Special Counsel File Nos. DI-06-1236; DI-06-1237; DI-06-1253;
DI-06-1272; DI-06-1273; and, DI-06-1286

Dear Mr. Bloch:

In response to your April 21, 2006 letter concerning allegations of misconduct at the Sanford International Airport, Sanford, Florida, please find attached a report completed by the U.S. Customs and Border Protection, Office of Internal Affairs. This report is submitted in accordance with 5 U.S.C. § 1213(d). In addition, per agreement between Karen Gorman of your Disclosure Branch staff, the Department of Homeland Security (DHS) was granted an extension in which to file this report until October 25, 2006.

In accordance with 5 U.S.C. § 1213(d), Secretary Chertoff has designated me to respond to your additional questions.

Should you have any further inquiries, please do not hesitate to contact my office or Julie A. Dunne in the DHS Office of the General Counsel at (202) 282-9180.

Sincerely,

A handwritten signature in cursive script that reads "Michael Jackson".

Michael Jackson

Enclosure

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	[Report of Investigation]	12	N.D.	P6/b6; b7c;

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COLLECTION:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [14]

FRC ID:

11294

OA Num.:

10821

NARA Num.:

10383

FOIA IDs and Segments:

2014-0210-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

Deed of Gift Restrictions

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Freedom of Information Act - [5 U.S.C. 552(b)]

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	[Rebuttal Letter]	2	N.D.	P6/b6; b7c;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	OSC File No. DI-06-1236 [with attachment]	5	12/27/2006	P6/b6; b7c;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	OSC File No. DI-06-1237 - To: Karen Gorman	1	12/04/2006	P6/b6; b7c;

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SERIES:

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FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [14]

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Records Not Subject to FOIA

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U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

**FACSIMILE COVER SHEET****TO:**

Name: The Honorable Fred Fielding	
Title: Counsel to the President	
Organization: The White House	
Office / Location: Washington, D.C.	
Telephone: (202) 456-2632	Fax: (202) 456-6279

FROM:

Name: Scott J. Bloch	
Organization: Office of Special Counsel	
Office / Location: Washington, D.C.	
Telephone: (202) 254-3601	Fax: (202) 653-5151

Date: May 24, 2007	Number of pages, including this cover sheet: 19
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Message: Original and enclosures to follow by Federal Express delivery

If you did not receive the total number of pages shown, please call Denise Toney at (202) 254-3632.

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**U.S. OFFICE OF SPECIAL COUNSEL**1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505www.osc.gov**The Special Counsel**

May 24, 2007

The Honorable Frederick Fielding
Counsel to the President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-06-0354

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter, report and comments to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch

Enclosure

**U.S. OFFICE OF SPECIAL COUNSEL**1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505www.osc.gov**The Special Counsel**

May 24, 2007

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-06-0354

Dear Mr. President:

I received a disclosure from Mr. Norman Prevatte, a former Facilities Management Officer, Department of Homeland Security (DHS), Customs and Border Protection (CBP), U.S. Border Patrol, Marfa Sector, Marfa, Texas. Mr. Prevatte, who consented to the release of his name, alleged that DHS did not exercise proper contract oversight for the U.S. Army Corps of Engineers' (USACE) Marfa Sector refurbishment project. As a result, Mr. Prevatte contended that the U.S. Border Patrol needlessly spent thousands of dollars and man-hours diagnosing and repairing defective construction deliverables. This conduct, he maintained, constituted gross mismanagement and a gross waste of funds by DHS and USACE officials.

I required the Secretary of Homeland Security to conduct an investigation into these disclosures pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary tasked the Office of the Inspector General with conducting the investigation and writing the report. The report's findings are discussed further in the attached Analysis.

While the report did not substantiate Mr. Prevatte's allegations, it acknowledges that an overall lack of project oversight led to problems with the construction and the quality of deliverables which gave rise to his allegations. Ultimately, the allegations were not substantiated because the OIG determined that the problems identified were not severe enough to warrant findings of gross mismanagement or a gross waste of funds. Nevertheless, the report credits Mr. Prevatte with "bringing to light the necessity for diligent management of construction projects." In addition, DHS Deputy Secretary Michael P. Jackson requested that CBP Commissioner Basham undertake a systemic assessment of how this case can suggest mechanisms for strengthening contract oversight for field construction projects in the future to prevent similar problems from recurring.

I have reviewed the original disclosures and the DHS report. Based on that review, I have determined that the agency's report contains all of the information required by statute and that the findings appear to be reasonable.

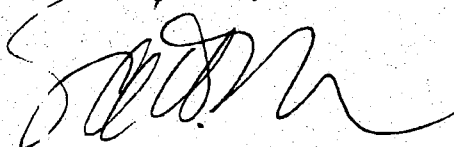
The Special Counsel

The President

Page 2

As required by law, 5 U.S.C. § 1213(e)(3), I have sent a copy of the report to the Chairmen of the Senate Committee on Homeland Security and Government Affairs and the House Committee on Homeland Security. I have also filed a copy of the agency report in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Scott J. Bloch', written over a horizontal line.

Scott J. Bloch

Enclosures

Withdrawal Marker

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Analysis of Disclosures, Agency Investigation and Report...	5	05/24/2007	P6/b6; b7c;

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COLLECTION:

Counsel's Office, White House

SERIES:

Fielding, Fred - General Files

FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [14]

FRC ID:

11294

OA Num.:

10821

NARA Num.:

10383

FOIA IDs and Segments:

2014-0210-F

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	OSC File No. DI-06-0354 - To: Scott Bloch - From: Michael Jackson	6	01/17/2007	P6/b6; b7c;

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Letter	OSC File No. DI-06-0354 - To: Jacob Briem	4	01/27/2007	P6/b6; b7c;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Letter	[Letter] - To: Fred Fielding - From: Scott Bloch	2	05/30/2007	P6/b6;

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