

By Telecopier and First-Class Mail
February 1, 2007

Mr. Clay Johnson, III
Chairman, President's Council on Integrity And Efficiency
U.S. Office of Management and Budget
Eisenhower Executive Office Building
17th Street and Pennsylvania Ave., N.W.
Room 113
Washington, D.C. 20503

Re: Continuing Obstruction of OPM OIG Investigation of Scott Bloch

Dear Mr. Johnson:

I am writing to you for the second time to request that you take steps immediately to address continuing efforts by Special Counsel Scott Bloch and his political staff to interfere with and obstruct the investigation of his misconduct that is being conducted at your direction by the Office of Inspector General, Office of Personnel Management (OIG). On January 30, 2007, Rebecca McGinley, one of Scott Bloch's schedule C employees, sent an email to all employees of the Office of Special Counsel (OSC). In that email (the complete text of which is enclosed), Ms. McGinley made the extraordinary claim that you have personally instructed the OIG that its investigators may not directly contact OSC employees to set up interviews of relevant staff witnesses, unless Ms. McGinley is informed. Indeed, in the January 30 email, Ms. McGinley directs staff that have been contacted directly by the OIG that they must notify her of this contact. Further, she has claimed that you have directed that the OPM investigators must conduct all interviews at OSC headquarters, unless the employee being interviewed specifically requests otherwise.

In her email, Ms. McGinley claimed that "this is how OSC conducts investigations and OPM OIG is expected, and has been directed to follow our procedures." Ms. McGinley admonished the staff that if they were contacted by OPM OIG directly, they were required to "notify me immediately."

Ms. McGinley's representation of OSC policy is patently false. For reasons that should be obvious, OSC policy does not require that it alert agency management whenever it directly contacts witnesses in an OSC investigation. Nor does it require that OSC conduct interviews at the witnesses' worksite, unless the witness explicitly requests another venue. On the contrary, pursuant to longstanding OSC policy, which is still posted on the agency website, "OSC reserves the right to contact witnesses directly when appropriate," rather than scheduling interviews through an agency liaison. See

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<http://www.osc.gov/documents/pubs/dr-memo.htm>. Nor is there any OSC policy that requires witness interviews to be conducted at the employee's work site right under the nose of the subject of the investigation, unless the witness requests otherwise. Indeed, we are aware of no government investigatory agency that would adopt the kind of procedures that Ms. McGinley claims you have imposed because such procedures would obviously intimidate witnesses and compromise the ability of investigators to secure truthful testimony. Such requirements would also create a substantial risk that employees who were contacted by the IG would suffer retaliation. That risk is real in this case, given that the investigation itself concerns whether Mr. Bloch retaliated against employees on the basis of whistleblowing or the exercise of statutory rights.

Ms. McGinley's intimidating and inaccurate email is only the most recent example of her continuing efforts on Mr. Bloch's behalf to obstruct this investigation and intimidate potential witnesses. Enclosed is a copy of my letter of September 7, 2006, which alerted you to other similar inappropriate actions and communication of inaccurate information by Ms. McGinley and by Mr. Bloch himself, which were plainly designed to obstruct the investigation. In that letter, we urged you to "take immediate and aggressive action to address" their improper interference with the OIG's work. To date, we have received no response to our letter of September 7; apparently no action at all has been taken. Your inaction seems to have further emboldened Mr. Bloch and Ms. McGinley to continue their obstructive and intimidating tactics. In fact, they are now invoking your name in support of those actions.

The investigation of the serious charges against Mr. Bloch has been dragging on for about 18 months, with no end in sight. Our observations suggest that this is not due to any lack of diligence by the OPM IG, but to Mr. Bloch's continued interference with the investigation, either personally, or through Ms. McGinley. Mr. Bloch has clearly not recused himself for this matter, as he is obligated to do and as the OPM IG has previously instructed him. On the contrary, he has, either personally or through his surrogates, enlisted the intervention of members of Congress, and outside interest groups, to pressure the Administration to call the investigation off entirely. The Administration has not buckled under that inappropriate political pressure to call the investigation off entirely. Nonetheless, it has done little to ensure that the OPM IG can, as a practical matter, get at the truth and finish its work, without further delay or interference from Mr. Bloch. Regrettably, it has failed entirely to respond to our repeated requests that OSC employees be reassured that neither Mr. Bloch, nor any of his political appointees or direct subordinates will be provided copies of the IG's report of investigation or findings.

The foregoing actions by Ms. McGinley and Mr. Bloch, as well as those outlined in my September 7 letter, are outrageous and inappropriate. Their reliance upon OSC practice in support of their demands that the identity of all witnesses be supplied to Ms. McGinley is simply based upon a misrepresentation of that policy. It is calculated to intimidate potential witnesses and frustrate the OIG's investigation.

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Therefore, on behalf of my clients, I request once again that you take affirmative steps to require Mr. Bloch and his appointees not to interfere with the IG's investigation. Specifically, we must insist that Ms. McGinley's involvement in the investigation end and that you confirm to OSC staff that she has misrepresented the procedures that the OIG must follow. Further, if it is necessary to appoint an individual at OSC to act as an intermediary with the OPM IG, the individual serving in that role should not be either a political appointee or one of Mr. Bloch's direct reports. We also reiterate our concern that OSC staff have been told by Mr. Bloch and/or Ms. McGinley that one of Mr. Bloch's political appointees or direct subordinates will be charged with the responsibility for reviewing the OIG's findings and deciding whether corrective or disciplinary action is warranted. To date, the employees remain under that impression and so, understandably, they feel that they are putting their careers on the line by cooperating in the investigation. They are also increasingly convinced that the investigation will never end and that, in any event, it will be a whitewash. It is imperative that you make an effort to restore the credibility of this investigation and that you take steps to assist the OIG in completing its investigation without further interference or intimidation, and without further delay.

Sincerely,



Debra S. Katz
Attorney for Complainants

Enclosures

cc (by telecopier):

Senator Daniel Akaka
Senator Susan Collins
Senator Carl Levin
Senator Joseph Lieberman
Rep. Henry Waxman
Mr. James Burrus, Chairman, Integrity Committee
Hon. Patrick McFarland, Inspector General, Office of Personnel Management

Text of email sent by Rebecca McGinley on 1/30/07 to "Everyone":

Re: OPM OIG investigation.

"It has been brought to my attention that OPM OIG is contacting OSC employees directly. As you were told last March (and again in September) OPM OIG is conducting an investigation on our behalf regarding prohibited personnel practice allegations against the Special Counsel. OPM OIG signed a Memorandum of Understanding (MOU) with us agreeing to provide investigative services and we agreed to pay for these services. As part of the agreement, OPM OIG agreed to abide by our policies and procedures when conducting this investigation (since their conducting this investigation in our shoes).

As Jill Maroney (OPM Special Agent in charge) told you in her e-mail back in March, you may contact her directly in regard to any relevant information you wish to provide in connection with this investigation. However, as the person delegated to assure this investigation is done in compliance with the MOU, OMB (through Clay Johnson, Deputy Director of Management) has instructed OPM OIG to contact me if they wish to interview any current OSC employees who has not contacted them directly so that I can arrange for their interview to be conducted. Further, OMB has directed OPM OIG to conduct all OSC employee interviews at OSC in the space that has been put aside for them on the 2nd floor unless an employee requests that his/her interview be held at a different location.

Again, this is how OSC conducts investigations and OPM OIG is expected, and has been directed to follow our procedures. So if you are contacted by OPM OIG directly, please notify me immediately.

If you have any questions about the above and/or about the handling or future disposition of this investigation, please contact me or our General Counsel, Erin McDonnell."

KATZ, MARSHALL & BANKS, LLP

Debra S. Katz, Partner
Direct Dial: 202-299-1143
katz@kmblegal.com

By Telecopier
September 7, 2006

Mr. Clay Johnson, III
Chairman, President & Executive Councils on Integrity & Efficiency
c/o United States Office of Management and Budget
Eisenhower Executive Office Building
17th Street & Pennsylvania Ave., N.W.
Room 113
Washington, D.C. 20503

RE: Complaint Against Scott J. Bloch, Special Counsel,
Office of Special Counsel (OSC) to White House Counsel

Dear Mr. Johnson:

As you know, the law firm of Katz, Marshall & Banks, LLP, represents the public interest organizations and former and current employees of the U.S. Office of Special Counsel ("OSC") whose allegations against Special Counsel Scott Bloch are being investigated, at your direction, by the Inspector General of the Office of Personnel Management ("OPM IG"). I am writing to you now to advise you of serious concerns about Mr. Bloch's conduct during this investigation, and to ask for your intervention to ensure its integrity.

At the outset, let me say that we have been very impressed by the professionalism and dedication of the members of the staff of the OPM IG who have been assigned to this investigation. They have been responsive, engaged, and appear committed to fully investigating the allegations that we have filed against Mr. Bloch concerning his alleged commission of Prohibited Personnel Practices at OSC, including whistleblower retaliation, crony hiring, and sexual orientation discrimination. Nonetheless, information provided to me by my clients and others familiar with OSC demonstrates that absent some affirmative action by the Administration the ability of the OPM IG to conduct the thorough investigation that you contemplated is in serious jeopardy.

As we have repeatedly advised you and the OPM IG, OSC employees, including several of the complainants, are extremely scared that they will suffer retaliation as a result of their participation in the OPM IG's investigation. We have received confirmation from several sources that Mr. Bloch has violated his obligation to recuse himself from the investigation and

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any matters related to it. One witness already informed OPM IG investigators that shortly after the investigation began and the first staff witnesses were interviewed, Mr. Bloch seriously considered and debated whether he could and should compel employees who had been interviewed by the IG's staff to complete affidavits describing what they had been asked and what they had told investigators. We have been advised that Mr. Bloch discussed this plan with members of the senior staff, who apparently talked him out of this bizarre and patently illegal plan. Nonetheless, his consideration of a plan to compel employees to reveal what they had told investigators, and his continuing involvement, have become widely known at OSC, causing current employees – including several of the complainants – to be reluctant, and thus far to refuse, to meet with OPM IG investigators.

This is all the more true because, as we recently learned, the OPM IG is required to schedule witness interviews through Mr. Bloch's political assistant, Rebecca McGinley, who is known for her political loyalty to Mr. Bloch and is widely mistrusted by the OSC career staff. There is every reason to believe that Ms. McGinley (who has publicly misrepresented herself as a "presidential appointee") would keep Mr. Bloch himself informed regarding which members of the staff had been interviewed by the OPM IG.

Further, we also understand that it is generally believed by OSC employees that, pursuant to your direction, once the OPM IG completes its investigation, it will not only provide copies of its report of investigation to Mr. Bloch's deputy (a now-vacant position formerly held by James McVay) but that Mr. Bloch's deputy will be **responsible** for deciding whether violations of the law have taken place and whether any corrective action will be taken to provide a remedy to injured employees. Apparently, Mr. Bloch and/or his political staff have communicated this erroneous understanding to OSC's career employees. Not only is this contrary to your instructions regarding decision-making authority in this case, but such miscommunications understandably make witnesses at OSC even more fearful of retaliation and more reluctant to be interviewed by OPM IG.

Finally, we are informed that OSC employees are generally confused about the scope of the investigation the OPM IG is conducting. Their ignorance of this very basic matter further contributes to employees' distrust of the entire process and threatens the ability of the OPM IG staff to effectively conduct their investigation of what you have correctly acknowledged are serious allegations against Mr. Bloch.

These issues, and Mr. Bloch's consistent pattern of resistance to this investigation (and improper involvement in it), are deeply troubling. We urge you to take immediate and aggressive action to address them, including formal steps to enforce the recusal of Mr. Bloch from this investigation. Among other things, interviews of OSC employees should be coordinated with a

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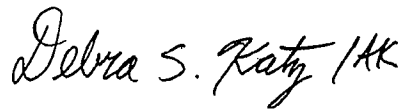
member of the senior career staff, not one of Mr. Bloch's political appointees. Further, we request that Mr. Bloch be advised in writing, with copies to all OSC staff, that he and his political staff are to have no involvement in this investigation.

In addition, we believe that Ms. Bloch's actions reinforce our initial concerns regarding the decision that was made to provide a copy of the report of investigation to his deputy, whomever that may ultimately be. We urge you to reconsider that decision, in light of Mr. Bloch's continuing inappropriate conduct. At a minimum, we request that OSC employees be advised that you or the OPM IG designee – and not Mr. Bloch's Deputy – will be responsible for deciding whether violations of the law have taken place and whether any corrective action will be taken to provide a remedy to injured employees.

Lastly, I am enclosing a copy of a letter we recently directed to the Congressional Caucus for Women's Issues, which details recent actions Mr. Bloch has taken at OSC to promulgate a dress code that we believe is sexist and likely unlawful.

Again, I want to make clear that we have great respect for the members of the OPM IG who have been assigned to this investigation. We believe that their efforts to ferret out the truth will be assisted if either you or your designee provide written clarification to OSC employees about the scope of the investigation and confirm your direction to Mr. Bloch to recuse himself from these matters.

Sincerely,



Debra S. Katz

Enc.

cc: Chris Swecker, Chair Integrity Committee
Senator Daniel Akaka
Senator Susan Collins
Senator Charles Grassley
Senator Carl Levin
Senator Joseph Lieberman
Senator George Voinovich
Acting Director of the Office of Personnel Management Dan Blair

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Alberto Gonzales, White House Counsel
Patricia Marshall, Special Counsel
Patrick E. McFarland, Inspector General