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Congress of the United States

House of Representatives

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April 26, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On March 28, 2012, I sent you a letter requesting Committee action on a report issued by the Inspector General of the National Labor Relations Board (NLRB) on March 19, 2012, which documented numerous instances in which two former Board Members, Peter Schaumber and Peter Kirsanow, obtained confidential inside information from a current Board member, Terence Flynn, and used it for their private benefit.¹

I am writing today to reiterate my request for documents and transcribed interviews of Mr. Schaumber and Mr. Kirsanow, particularly in light of new and troubling information that makes our Committee's oversight even more imperative.

Specifically, the Inspector General has now informed my staff that he has identified multiple additional improper disclosures of confidential inside information to Mr. Schaumber that he believes are even more serious than those he identified previously. He also reported that he intends to issue a supplemental report on these matters this week.

In addition, the Inspector General has now referred the improper disclosures described in his initial report to the Office of Special Counsel for potential Hatch Act violations due to Mr. Schaumber's role as a senior adviser to presidential candidate Mitt Romney. As the Inspector General's referral letter explains, Mr. Flynn "provided non-public deliberative information and other assistance to Peter Schaumber, a co-chair of the Labor Policy Advisory Group for the Mitt Romney Presidential campaign."²

¹ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (Mar. 28, 2012) (online at http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5661&Itemid=104).

² Letter from Dave Berry, Inspector General, National Labor Relations Board, to Ana Galindo-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel (Apr. 3, 2012).

It remains unclear to what extent Mr. Schaumber and Mr. Kirsanow may have taken advantage of this confidential inside information to benefit their own financial interests, the pecuniary interests of their clients, or the political interests of Mr. Romney's campaign. It also remains unclear to what extent these officials used the information in a manner that may have jeopardized the due process rights of litigants or interfered with the deliberative process of the NLRB.

In order to fully investigate these abuses, I reiterate my previous request for transcribed interviews of both Mr. Schaumber and Mr. Kirsanow, as well as requests for documents relating to this investigation.

Inspector General's Findings

As I explained in my previous letter, the NLRB Inspector General issued an investigative report on March 19, 2012, concluding that two former Board Members, Peter Schaumber and Peter Kirsanow, obtained confidential pre-decisional information, as well as attorney-client privileged information, on both active litigation and proposed rulemakings, from Terence Flynn, a current Board Member who was then serving as Chief Counsel.

Based on these findings, the Inspector General concluded as follows:

We also find that the improper disclosure of information to former Members Kirsanow and Schaumber amounted to a conversion of the information for the private benefit of former Member Kirsanow and his client, the National Association of Manufacturers, and former Member Schaumber's labor relations consulting and/or legal practice. The improper disclosures of information to former Member Schaumber were particularly detrimental to the Board's deliberative process in that they involved the positions of Board Members and staff prior to the public announcement of Board decisions and disclosure of the type of information that could have a chilling effect on the operation of the Board and may prejudice the due process rights of the parties in pending and future cases.

According to the Inspector General's report, after leaving the NLRB, Mr. Schaumber obtained the following information from Mr. Flynn:

- Internal memoranda between the Office of General Counsel and the Board, one of which contained legal advice to the Board;
- An email disclosing recommendations by the NLRB's Acting General Counsel regarding whether the Board should join in litigation as an amicus party;

- A document that listed the Member and attorney assignments and status of cases pending before the Board; and
- An e-mail attaching analysis and comments prepared by three Board counsels for a Board Member on the resolution for the representation rule that would be considered at the Board's open meeting.

According to the Inspector General's report, investigators located on Mr. Flynn's computer a business plan that appeared to have been created by Mr. Schaumber. The file, named "Schaumber business plan.doc," stated:

My practice will be developed in part by leveraging my Agency connections and focusing the attention of senior management on the likely priorities of the Obama Board and strategies to respond to them.

Another file, entitled "Schaumber SuppBusPlan.doc," described how Mr. Schaumber would "serve as a liaison for the firm on matters requiring high level intervention at the National Labor Relations Board and other Government agencies."

Similarly, according to the Inspector General's report, Mr. Kirsanow obtained from Mr. Flynn attorney-client privileged information relating to his representation of the National Association of Manufacturers (NAM) in an action against the NLRB, seeking to prevent the NLRB from implementing a recently proposed notice posting rule. Mr. Kirsanow also received research assistance from Mr. Flynn in relation to his representation of NAM in the notice posting rule litigation, according to the Inspector General's report.

The Inspector General has informed my staff that he has referred these matters to the Department of Justice for potential criminal prosecution.

New Information from Inspector General

In my previous letter to you on March 28, 2012, I requested that the Committee conduct transcribed interviews of former Board Members Schaumber and Kirsanow to determine the extent to which they may have used the information they obtained for their private financial benefit or to advance their clients' business interests. I explained that the Inspector General did not conduct interviews of either Mr. Schaumber or Mr. Kirsanow.

Since the Inspector General's report focused predominantly on the conduct of Mr. Flynn, it relied primarily on records already in the custody and control of the NLRB. For these reasons, I also requested that the Committee send letters to both former Board Members seeking documents relating to these matters.

I have now become aware of additional information regarding the extent to which Mr. Schaumber obtained access to confidential, inside information. Specifically, after further investigation, the Inspector General has now identified additional deliberative information that was leaked improperly to Mr. Schaumber. The Inspector General has informed my staff that he intends to issue a supplemental report this week providing additional information about these violations, which he considers even more serious than those outlined in his initial report.

In addition, the Inspector General has informed my staff that he has now referred to the Office of Special Counsel (OSC) potential Hatch Act violations involving disclosures of internal government information to Mr. Schaumber in his capacity as an adviser to the presidential campaign of former Massachusetts Governor Mitt Romney. On April 3, 2012, the Inspector General sent a letter to the chief of OSC's Hatch Act Unit, which stated:

During the course of an investigation, we found evidence that between September 15, 2011 and November 30, 2011, Terence Flynn, a National Labor Relations Board (NLRB) employee, provided non-public deliberative information and other assistance to Peter Schaumber, a co-chair of the Labor Policy Advisory Group for the Mitt Romney Presidential campaign.³

As you know, the Hatch Act prohibits federal employees from using their official authority or influence to interfere with or affect the results of an election and bans them from engaging in political activities to help a particular political party or candidate for office when on duty. If true, the allegations set forth by the Inspector General are troubling and raise significant concerns about the extent to which Mr. Schaumber and others may have benefited from these improper, and potentially illegal, activities.

Conclusion

On April 16, 2012, the Committee held a hearing on a report issued by the Inspector General of the General Services Administration detailing abuses at a conference in Las Vegas. As soon as you learned of this report, you reacted immediately by scheduling a public hearing within two weeks on the first day Congress returned from its Spring recess. You sent broad document requests, and you quickly issued two subpoenas in that two-week timeframe.⁴ I

³ Letter from Dave Berry, Inspector General, National Labor Relations Board, to Ana Galindo-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel (Apr. 3, 2012).

⁴ Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 4, 2012); Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 9, 2012); Letter from Darrell E. Issa, Chairman, House

The Honorable Darrell E. Issa
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actively supported the Committee's oversight efforts by immediately requesting a briefing from the Inspector General, asking for an additional witness to testify at the hearing, and publicly condemning the actions of GSA officials involved.

In contrast, you have been silent on the NLRB Inspector General's report, and you have taken no action whatsoever in response to my request. You have called no hearings, conducted no interviews, and sent no document requests.

Our Committee should conduct vigorous oversight of alleged abuses on an even-handed basis, regardless of whether those implicated are Republicans or Democrats. For these reasons, I request that the Committee move forward and schedule the transcribed interviews of Mr. Schaumber and Mr. Kirsanow for the week of April 30, 2012. I also request that the Committee send to both individuals the requests for documents I set forth in my previous letter.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

Committee on Oversight and Government Reform, to the Honorable Brian D. Miller, Inspector General, U.S. General Services Administration (Apr. 12, 2012); Letter from Darrell E. Issa, Chairman, House Committee on Oversight and Government Reform, to Daniel M. Tangherlini, Acting Administrator U.S. General Services Administration (Apr. 9, 2012). *See also* House Committee on Oversight and Government Reform, Subpoena to Acting Administrator Daniel M. Tangherlini (Apr. 12, 2012); House Committee on Oversight and Government Reform, Subpoena to Jeffrey Neely, Acting Regional Administrator, General Services Administration (Apr. 12, 2012).