



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000
February 8, 2021

Mr. Nikhel Sus
CREW
1101 K St., Suite 201
Washington, DC 20005
Via email: foia@citizensforethics.org

Re: Freedom of Information Act Request (#FOIA-2021-043)

Dear Mr. Sus:

Please be advised that the U.S. Office of Special Counsel (OSC) received a referred Freedom of Information Act (FOIA) request from the Merit Systems Protection Board (MSPB) consisting of fourteen (14) pages on January 26, 2021. Your request has been processed under the FOIA, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

We are releasing five (5) pages to you in full, seven (7) pages in part, and withholding two (2) in full pursuant to FOIA Exemptions (b)(6), (b)(7)(A), and (b)(7)(C).

- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).
- FOIA Exemption (b)(7)(A) permits withholding of records when interference with law enforcement proceedings can be reasonably expected. *See* 5 U.S.C. § 552(b)(7)(A).
- FOIA Exemption (b)(7)(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7000. Please reference the above tracking number when you call or write. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,
/s/
Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)

Office of Special Counsel, Petitioner v. Lynne Patton, Respondent
Original Jurisdiction Appeal
Special Counsel Disciplinary Action
Summary Page

Case Title : Office of Special Counsel, Petitioner v. Lynne Patton, Respondent
Appeal Type: Original Jurisdiction Appeal
Appeal Title : Special Counsel Disciplinary Action
Filer's Name : Jacqueline Olivia Yarbro
Filer's Appeal Role : Petitioner Representative

Details about the supporting documentation

N/A

Table of Contents

Pleading Interview	3
Uploaded Appeal Text Document	4

Office of Special Counsel, Petitioner v. Lynne Patton, Respondent
Original Jurisdiction Appeal
Special Counsel Disciplinary Action
Complaint
Online Interview

Petitioner Information

Agency Name Office of Special Counsel
1730 M Street, N.W., Suite 218
Address: Washington
DC - 20036-4505
United States of America

Petitioner Representative Information

Name Jacqueline Olivia Yarbrow
Service Method e-Filer
1730 M Street NW
Suite 218
Address: Washington
DC - 20036
United States of America
Phone Numbers: Work: (202) 804-(b)(6);
(b)(7)(D)
Fax: (202) 254-3700

Respondent Information

Name Lynne Patton
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3541
Address: New York
NY - 10278-0068
United States of America
Phone Numbers: Work: (212) 542-(b)(6);
(b)(7)(C)
Other: (917) 355-(b)(6);
(b)(7)(C)

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

SPECIAL COUNSEL,)	
)	
Petitioner,)	DOCKET NUMBER:
)	
v.)	
)	DATE: January 11, 2021
LYNNE PATTON,)	
)	
Respondent.)	
)	

COMPLAINT FOR DISCIPLINARY ACTION

Petitioner U.S. Office of Special Counsel (OSC) brings this Complaint for Disciplinary Action against Respondent Lynne Patton pursuant to 5 U.S.C. §§ 1212(a)(5), 1215(a)(1)(B), 1216(a)(1), 1216(c), 7323(a)(1), and 5 C.F.R. §§ 734.102 and 734.302(a). The Merit Systems Protection Board (Board) has authority to adjudicate this action pursuant to 5 U.S.C. §§ 1204(a)(1), 1215(a)(1), 1216(c), and 7326.

Relevant Statutes and Regulations

Section 7323(a)(1) of title 5 of the *United States Code* and 5 C.F.R. § 734.302 prohibit federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. 5 C.F.R. § 734.302(b)(2) provides that an employee violates the use of official authority restriction when she, for example, uses her official title while participating in political activity. “Political activity” is defined as activity directed toward the

success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

I. STATEMENT OF SUPPORTING FACTS

A. Patton's Federal Employment History

1. Patton has been employed by the United States Department of Housing and Urban Development (HUD) since January 21, 2017. She was appointed as its Region II Administrator in June 2017, and began her duties in this position on July 5, 2017.

2. As such, at all times relevant to this Complaint, Patton has been a federal, executive-branch employee covered by the Hatch Act, 5 U.S.C. §§ 7321-7326.

3. Patton has received Hatch Act training throughout her employment with HUD and has regularly received Hatch Act material and advice from HUD ethics officials.

4. Patton previously has been the subject of Hatch Act complaints and received a September 18, 2019 warning letter from OSC advising her that if in the future she engaged in prohibited political activity while employed in a position covered by the Hatch Act, OSC would consider such activity to be a willful and knowing violation of the law, which could result in further action.

B. As Region II Administrator, Patton Was Approved by HUD to Live in New York City Housing Authority (NYCHA) Housing Where She Met NYCHA Residents

5. In her role as HUD Region II Administrator, Patton oversees all Region II operations in New York and New Jersey.

6. NYCHA is located within HUD Region II.

7. Patton exercises influence and authority over NYCHA operations. For example, Patton:

- a. has frequent contact with HUD Secretary Ben Carson and the White House about NYCHA;
- b. has regular meetings about NYCHA with housing authority officials, stakeholders, and an independent federal monitor; and
- c. played an integral part in a January 2019 multi-billion-dollar settlement agreement between HUD, the United States Attorney's Office for the Southern District of New York, NYCHA, and New York City.

8. In early 2019, Patton received approval from HUD officials to live in NYCHA housing to observe living conditions.

9. Patton lived in NYCHA housing for approximately one month in her role as HUD Region II Administrator.

10. Patton stayed with (b)(6); (b)(7)(C) a NYCHA resident (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) for approximately one week during her one-month stay in NYCHA housing as HUD Region II Administrator.

11. But for Patton's role as HUD Region II Administrator, Patton would likely never have known (b)(6); (b)(7)(C)

C. Patton Used Her Federal Position to Solicit Participation in a Video for the 2020 Republican National Convention (RNC)

12. At all times relevant to this Complaint, President Donald J. Trump was the Republican Party candidate in the 2020 U.S. presidential election.

13. The RNC is a nominating convention hosted by the Republican Party to, *inter alia*, formally nominate the Republican presidential candidate and show support for the nominee.

14. Patton proposed filming a video segment about NYCHA housing for the RNC to Lara Trump and Katrina Pierson, senior advisors to the Trump reelection campaign.

15. Patton wanted NYCHA residents to appear in the video to explain how their standard of living had improved under the Trump Administration.

16. Patton contacted (b)(6); (b)(7)(C) and asked (b)(6); (b)(7)(C) to participate in the video.

17. Patton contacted (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C) was aware of the improvements made to NYCHA by HUD during the Trump Administration.

18. Patton told (b)(6); (b)(7)(C) that (b)(6); (b)(7)(C) participation in the video would be an opportunity to highlight issues within NYCHA on a national platform.

19. At the time Patton contacted (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) thought that the video might be used for HUD-related purposes.

20. (b)(6); (b)(7)(C) later asked Patton for permission for other NYCHA residents or (b)(6); (b)(7)(C) to participate in the video, to which Patton agreed.

21. Patton agreed that other NYCHA (b)(6); (b)(7)(C) could participate in the video because they knew who Patton was and the improvements the Administration had made to NYCHA housing.

22. After Patton received the Republican Party's approval to create the video and contacted (b)(6); (b)(7)(C) to secure (b)(6); (b)(7)(C) participation, she sought and received Hatch Act and ethical advice from HUD ethics attorneys. *See e.g.*, Ex. 1.

23. Even though Patton had been warned by OSC in the September 18, 2019 warning letter that any future Hatch Act-prohibited conduct could result in further action, at no point did she contact OSC to seek guidance concerning her involvement in the RNC video.

D. Patton Used Her Federal Position during the Filming of the RNC Video

24. The RNC video was filmed on August 18, 2020, at the Frederick Douglass Houses, a NYCHA tenant complex.

25. Four NYCHA residents - (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) were interviewed for the RNC video.

26. Patton was accompanied to the video filming by her subordinate, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

27. Before filming, Patton told (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) that the video would air at the RNC and assured the residents that the purpose of the video was to highlight nonpartisan issues associated with NYCHA conditions, even though Patton knew that the purpose of the video was to support President Trump's reelection campaign.

28. During filming, Patton positioned herself behind the camera and asked the NYCHA residents questions specific to NYCHA, living conditions in NYCHA housing, and the Trump Administration.

29. While questioning the NYCHA residents during the August 18, 2020 filming, Patton:

- a. invoked her position as HUD Region II Administrator;
- b. referenced actions she had taken to improve NYCHA as HUD Region II Administrator; and
- c. discussed her early 2019 official stay at the NYCHA properties.

30. An edited version of the video ultimately aired at the RNC on August 27, 2020.

31. The version of the video that aired was approximately two minutes in length and showed clips of the NYCHA residents discussing their political affiliations, achievements of the Trump Administration related to NYCHA, and criticisms of New York City Mayor Bill DeBlasio.

II. STATEMENT OF CHARGES

A. Count One: Violation of 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302(a)—Use of Official Authority or Influence for the Purpose of Interfering with or Affecting the Result of an Election

32. Paragraphs 1 through 31 are hereby incorporated by reference.

33. Patton contacted (b)(6);
(b)(7)(C) a NYCHA resident whom Patton knew solely in her capacity as Region II Administrator, to secure (b)(6);
(b)(7)(C) participation in the RNC video.

34. Patton used information and connections available to her by virtue of her official position, as described in paragraphs 5-11, 14-18, and 20-21, to produce a video for the RNC that featured NYCHA residents and their stories about achievements of the Trump Administration related to NYCHA housing.

35. Patton, as described in paragraphs 28 and 29, invoked her position as HUD Region II Administrator and spoke about official activities associated with her position to obtain information from the NYCHA residents for use in the campaign video.

36. The purpose of the video was to support President Trump's reelection campaign.

THEREFORE, Patton used her official authority or influence for the purpose of interfering with or affecting the result of an election in violation of 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302(a).

WHEREFORE, Patton violated 5 U.S.C. § 7323(a)(1) and 5 C.F.R. § 734.302(a) by using her official authority or influence for the purpose of interfering with or affecting the result of an election. OSC requests that the Board find that Patton violated the Hatch Act and order appropriate disciplinary action pursuant to 5 U.S.C. § 7326.

Respectfully submitted,

Henry J. Kerner
Special Counsel

Anne Wagner
Associate Special Counsel

Ana Galindo-Marrone
Chief, Hatch Act Unit

(b)(6); (b)(7)(C)

Jacob B. Land
Attorney
U.S. Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, DC 20036
(202) 804-(b)(6); (Telephone)
(202) 254-3700 (Facsimile)
(b)(6); @osc.gov (Email)
(b)(7)(C)

(b)(6); (b)(7)(C)

Jacqueline Yarbro
Attorney
U.S. Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, DC 20036
(202) 804-(b)(6); (Telephone)
(202) 254-3700 (Facsimile)
(b)(6); @osc.gov (Email)
(b)(7)(C)

CERTIFICATE OF SERVICE

I, Jacqueline Yarbro, an attorney with the U.S. Office of Special Counsel, hereby certify that on this 11th day of January, 2021, I have caused copies of the Special Counsel’s *Complaint for Disciplinary Action* in the matter of *Special Counsel v. Lynne Patton* to be delivered to the following persons in the manner indicated:

By Electronic Filing:

The Clerk
U.S. Merit Systems Protection Board
1615 M Street, NW, 5th Floor
Washington, DC 20419

By Certified Mail and Electronic Mail:

Ms. Lynne Patton
Regional Administrator, Region II (New York/New Jersey)
Jacob K. Javits Federal Building
26 Federal Plaza, Room 3541
New York, NY 10278-0068
(212) 542-(b)(6); (Telephone)
(917) 355-(b)(7); (Telephone)
(b)(6); (b)(7)(C) @hud.gov (Email)

(b)(6); (b)(7)(C)
Jacqueline Yarbro
Attorney
U.S. Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, DC 20036
(202) 804-(b)(6); (Telephone)
(202) 254-3700 (Facsimile)
(b)(6); @osc.gov (Email)
(b)(7)(C)

EXHIBIT 1