

August 10, 2007

Ms. Erin McDonnell
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Office of Special Counsel
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Washington, DC 20036

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Re: “outing” OSC’s lawbreaking, stopping it, and obtaining a measure of justice for its victims

Dear Ms. McDonnell,

After 15 years of Carson v. Department of Energy, 4 years of Carson v. OSC, and one year of Carson v. MSPB, I have the following goals: 1) “out” OSC/MSPB lawbreaking, 2) get it stopped, and 3) obtain some measure of justice for the 10,000 or more victims of OSC/MSPB lawbreaking since 1989, particularly the 3000 or so who filed whistleblower appeals with MSPB after OSC failed to comply with its lawful duties to protect them.

I contend OSC is, relatively speaking, the most lawbreaking federal agency in the history of our Republic and that its lawbreaking (enabled by MSPB lawbreaking, and by knowledgeable attorneys in private sector giving it a “free pass” for reasons of self-interest) has significant explanatory power for national traumas as 9/11, failure of levees in New Orleans, loss of space shuttle Columbia, as well as countless other instances of federal malfeasance or incompetence since 1989.

I contend OSC’s systemic and persistent lawbreaking evidences a “meltdown” in legal ethics, in which OSC attorneys, specifically hired to implement the law (5 USC 1214) to protect concerned federal employees from prohibited personnel practices (PPP’s), particularly whistleblower reprisal, failed to do so and then cited their status as attorneys in claiming that legal ethics both required them to actively cover up their and OSC’s lawbreaking and prohibited them from blowing whistles about it.

Consistent with my allegations of systemic and persistent OSC lawbreaking, you have apparently been directing Mr. Kurt, OSC’s FOIA Officer, to evade compliance with 5 USC 552 in response to my FOIA request for OSC’s investigative reports of its 40 or more field investigations since 1989 of possible agency FOIA malfeasance. I suspect your intention is to cover-up your role in this lawbreaking.

By OSC’s annual reports to Congress since 1989, OSC has conducted 40 or more field investigations of allegations of agency FOIA non-compliance. The law relevant to these allegations and field investigations includes 5 USC 1214(e), 5 USC 1216(a)(3), 5 USC 1216(

c), and 5 USC 552(a)(4)(F). They are easy to harmonize. Whenever a Federal Judge, in a FOIA suit decision, per 5 USC 552(a)(4)(F), “issues a written finding that the circumstances surrounding the withholding (of the information requested by the FOIA) raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding,” and anyone, at any time, brings that Judge’s written finding to OSC’s attention, then OSC shall conduct a field investigation, per 5 USC 1216(a)(3).

Per 5 USC 1216(c), OSC can, does not have to, comply with 5 USC 1214(a) in how it conducts such an investigation, nor with 5 USC 1215 in seeking disciplinary action against agency personnel responsible for the improper withholding. However, it must comply with 5 USC 552(a)(4)(F) in documenting the results of its investigation and it must comply with 5 USC 1214(e) if, as a result of its investigation, it determines “there is reasonable cause to believe” that agency personnel violated FOIA law in improperly withholding requested FOIA information.

Specifically, by 5 USC 552(a)(4)(F), OSC must:

The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned...

Those findings could range from being completely benign to justifying OSC’s recommendations that the responsible agency officials be terminated and disbarred from future federal employment. But for each of the 40 or more such field investigations OSC has conducted since 1989, there should be a report of findings and recommendations. Those reports are what I have now been seeking for almost a year, via FOIA requests, appeals, and now a federal FOIA suit, despite your throwing up roadblock after roadblock.

I suspect OSC does not have a single such report, because I suspect you directed or concurred with OSC simply “dumping” its investigation of these 40 or more complaints, despite their citing the requisite Federal Judge’s finding. Strengthening my suspicion is my examination of OSC’s public records, maintained by 5 USC 1219 last year, last year. That revealed that OSC has not issued a single 1214(e) report since 1989. Additionally, no OSC Annual Report to Congress since 1989 mentions the results of any such OSC investigation.

If my allegations are proven correct, I trust the proper authorities in the federal government and your profession of law will evaluate disbarring you, as and other responsible OSC attorneys, past and present, from both the federal service and the practice of law.

Respectfully,

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