

August 26, 2015

The Honorable Charles Dent
Chairman
House Ethics Committee
1015 Longworth HOB
Washington, DC 20515

The Honorable Linda Sanchez
Ranking Member
House Ethics Committee
1015 Longworth HOB
Washington, DC 20515

Dear Chairman Dent and Ranking Member Sanchez:

We are writing to express deep concern about the House Ethics Committee's decision to withhold the findings of the Office of Congressional Ethics (OCE) related to its investigation of Member and staff travel to Azerbaijan. The Committee's action, along with its order to OCE to "cease and refer" without the Committee having officially started an investigation, sets a dangerous precedent that could fundamentally undermine the important benefits that OCE has brought to the House ethics process.

On July 31, the House Ethics Committee issued its report, "In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013" ("the Ethics Committee Report"). In the Ethics Committee Report, the Committee concluded that no Members knowingly violated House ethics rules and standards while raising concerns about possible criminal activities of third parties. Along with the Ethics Committee Report, the Committee released the report it received from the OCE, but not OCE's findings, which were submitted along with its report.

We are concerned about the Committee's unprecedented decision not to release the OCE's findings in circumstances where the Members under investigation remain within the Ethics Committee's jurisdiction. (The only other cases involving Members where the Committee did not release OCE's findings were when the subjects of the OCE reports resigned first—Nathan Deal and Paul Broun). This decision is especially concerning because the Committee itself played a decisive role in approving the Members' travel to Azerbaijan. It is unknown whether the OCE's findings shed any light of the role of the Committee in approving these trips. It also is unknown whether the OCE report shed any light on other activities by the sponsors of that trip. Such information could indicate whether the Committee Chair, Charlie Dent, who received [contributions in May](#) from individuals associated with the trip's sponsor, should have recused himself from discussion. In any case, the public should have access to that information.

Also, while we understand that the Committee claims it is not obliged to release OCE's findings because the Committee had sent OCE a "cease and refer" order and the Committee considered the findings "supporting documentation," it is not clear under House rules that the "cease and refer" order was indeed valid. Thus, the decision to withhold OCE's findings may have violated House rules. If this situation is not clarified, it could establish a dangerous precedent that would allow the Ethics Committee to order the OCE, a supposedly independent body, to "cease and refer" at any time, regardless whether the Committee meets the legal conditions for such an extraordinary order. In addition, the Committee's assertion of the authority to declare findings to be supporting documentation and to withhold findings from public disclosure could render the public disclosure requirements a nullity, in contradiction to the House of Representatives' rules and its intentions in creating the OCE.

Applicable Rules

House Resolution 895, adopted in 2008, states that OCE shall cease and refer at the request of the Committee when the Committee "is investigating such matter." H. Res. 895, 110th Cong. (2008), § 3, *available at* <https://www.congress.gov/bill/110th-congress/house-resolution/895>. The Committee claims, on the basis of that authority, that OCE should have ceased its investigation upon receipt of its letter of March 4th. However, under House Rule XI(3)(b)(i)(A), absent a complaint, the initiation of an investigation requires a majority vote by Ethics Committee. Rules of the House of Representatives, 114th Cong., *available at* <http://clerk.house.gov/legislative/house-rules.pdf>. It is not clear from the Committee's report that such a vote was ever taken. Committee On Ethics, "In the Matter of Officially-Connected Travel by House Members to Azerbaijan in 2013" (July 31, 2015) ("Ethics Committee Report"), *available at* <http://ethics.house.gov/sites/ethics.house.gov/files/In%20The%20Matter%20of%20Officially-Connected%20Travel%20by%20House%20Members%20to%20Azerbaijan%20in%202013.pdf>.

Furthermore, OCE rules adopted in January 2015 state that OCE will "cease and refer" only in cases where there is an on-going investigation of a matter "by an investigatory subcommittee of the Ethics Committee." Rule 12(A), OCE Rules for the Conduct of Investigations (January 23, 2015), *available at* http://oce.house.gov/OCE_Rules_Conduct_Investigations.pdf. According to the Ethics Committee Report, no investigative subcommittee was ever established.

The Committee's report states that "On March 4, 2015, the Chairman and Ranking Member sent a letter to OCE formally requesting that OCE cease its review of the Trips, and refer the matter immediately to the Committee." Ethics Committee

Report at 15. It explains that this action was appropriate because “the Committee had an ongoing investigation, and had already requested information from relevant parties.” *Id.* However, the report makes no mention of a majority vote of the Committee to initiate a formal investigation, nor the formation of an investigatory subcommittee. Instead the report states: “Soon after the start of the 114th Congress, the Chairman and Ranking Member authorized Committee staff to investigate these and other related allegations pursuant to Committee Rule 18(a).” *Id.* at 2.

Committee Rule 18(a) states, “Notwithstanding the absence of a filed complaint, the Committee may consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of the duties or the discharge of the responsibilities of such individual. The Chair and Ranking Minority Member may jointly ***gather additional information*** concerning such an alleged violation by a Member, officer, or employee unless and until an investigative subcommittee has been established. [Emphasis added]. The Chair and Ranking Minority Member may also jointly take appropriate action consistent with Committee Rules to resolve the matter.” Rule 18(a), Rules of the Committee on Ethics of the U.S. House of Representatives, 114th Cong. (February 12, 2015), *available at*

<http://ethics.house.gov/sites/ethics.house.gov/files/Committee%20Rules%20for%20114th%20Congress--FINAL.pdf>.

Without a majority vote by the Committee to investigate, it appears that the Committee has conflated “gathering additional information” with what constitutes an actual “investigation.” This distinction, while technical, is important because it is essential in drawing the line for when the Committee may issue a “cease and refer” order to OCE. Unless the Committee has duly commenced an investigation in conformance with House rules, it has no authority to make a “cease and refer” request to the OCE.

Conclusion

It appears on the basis of the information contained in the Committee’s Report that the Committee did not comply with the applicable law and rules pertaining to its request that the OCE “cease and refer” the Azerbaijan matter. The House Ethics Committee was properly notified by OCE at stage one that it was conducting a preliminary investigation into the Azerbaijan trip and did not attempt to take over the investigation at that point. The order came only after OCE was well into its second stage of the investigation. Thus, the Committee lacks the authority to withhold OCE’s findings.

The Ethics Committee should immediately release to the public the OCE findings to return to compliance with House rules.

Sincerely,

Campaign Legal Center
Citizens for Responsibility and Ethics in Washington
Common Cause
Demand Progress
Democracy 21
Thomas Mann
National Legal & Policy Center
Norm Ornstein
Public Citizen
James Thurber

cc: House Speaker John Boehner
House Democratic Leader Nancy Pelosi