

March 7, 2023

Office of Congressional Ethics
U.S. House of Representatives
425 3rd Street SW
Washington D.C. 20024

**RE: Request for Investigation of Speaker of the House Kevin McCarthy (R-CA)
for Violation of House Rule XXII(1), “Code of conduct”**

Dear OCE Governing Board:

On behalf of Craig Holman, Ph.D. and Lisa Gilbert of Public Citizen, Ambassador Norman Eisen (ret.), and Richard Painter, we request an investigation into the recent exclusive release by House Speaker Kevin McCarthy (R-CA) to a single news outlet of confidential records obtained by the House Select Committee to Investigate the January 6 Attack on the United States Capitol.

Sincerely,

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Richard Painter, former Bush White House ethics advisor, 2005-07. rwpusa18@gmail.com

REQUEST FOR INVESTIGATION

In the wake of the attack on the U.S. Capitol on January 6, 2021, in an effort to overturn the 2020 presidential election results, Congress established the House Select Committee to Investigate the January 6 Attack on the United States Capitol (better known as the “Jan. 6 investigative committee”) by H.Res. 503 on June 30, 2021.

The Jan. 6 investigative committee sought and received a variety of records from citizens and public officials, including surveillance videos taken inside the Capitol Building from the Capitol Police and other sources, in an effort to provide the most comprehensive and factual account of what happened.

The committee followed a painstaking process to access and review the surveillance videos for its final report. The committee had a separate, password-protected computer for staff to review the security footage given concerns about the security of the Capitol complex. Access was restricted to members of the committee and select handful of staff. The public release of any of the security footage was done in coordination and with the permission of the Capitol Police. These precautions were taken to avoid releasing information that could compromise security procedures in the Capitol, such as exposing the locations of security cameras, escape routes and logistics at the Capitol.¹

The procedure for coordinating with the Capitol Police in publicly releasing any security footage was done in compliance with 2 U.S.C. §1979, “Release of security information,” which reads:

(a) Definition

In this section, the term "security information" means information that—

- (1) is sensitive with respect to the policing, protection, physical security, intelligence, counterterrorism actions, or emergency preparedness and response relating to Congress, any statutory protectee of the Capitol Police, and the Capitol buildings and grounds; and*
- (2) is obtained by, on behalf of, or concerning the Capitol Police Board, the Capitol Police, or any incident command relating to emergency response.*

(b) Authority of Board to determine conditions of release

Notwithstanding any other provision of law, any security information in the possession of the Capitol Police may be released by the Capitol Police to another entity, including an individual, only if the Capitol Police Board determines in consultation with other appropriate law enforcement officials, experts in security preparedness, and appropriate committees of Congress, that the release of the security information will not compromise the security and safety of the Capitol buildings and grounds or any individual whose protection and safety is under the jurisdiction of the Capitol Police.

¹ Claudia Grisales, “Rep. Bennie Thompson warns release of Jan. 6 video could compromise Capitol security,” NPR (Feb. 23, 2023), available at: <https://www.npr.org/2023/02/22/1158805129/democrats-are-warning-against-the-release-of-jan-6-tapes-to-a-fox-news-host>

(c) *Rule of construction*

Nothing in this section may be construed to affect the ability of the Senate and the House of Representatives (including any Member, officer, or committee of either House of Congress) to obtain information from the Capitol Police regarding the operations and activities of the Capitol Police that affect the Senate and House of Representatives.

(d) *Regulations*

The Capitol Police Board may promulgate regulations to carry out this section, with the approval of the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives.

(e) *Effective date*

This section shall take effect on December 8, 2004, and apply with respect to—

(1) any remaining portion of fiscal year 2004, if this Act is enacted before October 1, 2004; and

(2) fiscal year 2005 and each fiscal year thereafter.

(Pub. L. 108–447, div. G, title I, §1009, Dec. 8, 2004, 118 Stat. 3182.)

On February 20, 2023, it was first reported that House Speaker Kevin McCarthy (R-CA) had or will turn over more than 40,000 hours of security footage exclusively to Fox News analyst Tucker Carlson. Initially, the planned transfer of the records appeared to be without the coordination or permission of the Capitol Police, which potentially could expose security systems and escape routes within the Capitol Building. But Speaker McCarthy seems to have later realized the release would be in violation of safety protocols and federal law and decided that both he and Carlson’s team would coordinate with the Capitol Police.² Carlson plans on publishing select portions of these videos sometime soon.³

Other news outlets sent a letter to McCarthy requesting the same access and raised concerns that Carlson’s selective release of videos and other confidential information about the insurrection could be used by Fox News to advocate an inaccurate story of events. The letter reads in part:

“Without full public access to the complete historical record, there is concern that an ideologically-based narrative of an already polarizing event will take hold in the public consciousness, with destabilizing risks to the legitimacy of Congress, the Capitol Police, and the various federal investigations and prosecutions of Jan. 6 crimes.”⁴

² Jacqueline Alemany, Marianna Sotomayor and Leigh Ann Caldwell, “McCarthy defends Carlson’s access to Jan. 6 footage, calls media ‘jealous’,” Washington Post (Feb. 28, 2023), available at:

<https://www.washingtonpost.com/politics/2023/02/28/kevin-mccarthy-tucker-carlson-jan-6-footage/>

³ Mike Allen, “McCarthy gives Tucker Carlson access to trove of Jan. 6 riot tapes,” Axios (Feb. 20, 2023), available at: [Exclusive: Kevin McCarthy gives Tucker Carlson access to massive trove of Jan. 6 riot tape \(axios.com\)](https://www.axios.com/news/2023/02/20/mccarthy-gives-carlson-access-to-jan-6-riot-tapes/)

⁴ Anumita Kaur, “News outlets demand release of Jan. 6 footage given to Tucker,” Washington Post (Feb. 24, 2023), available at: <https://www.washingtonpost.com/politics/2023/02/24/tucker-carlson-jan-6/>

“It almost seems like the press is jealous,” McCarthy responded to the request from other news outlets in an interview with *The Washington Post*. “And that’s interesting because every person in the press works off exclusives on certain things.”⁵

The exclusive release of the Jan. 6 video footage appears to have been the result of a political agreement between McCarthy, Tucker Carlson and others in McCarthy’s bid to become Speaker.⁶ Just as importantly, it was wrong for Speaker McCarthy to provide this footage to one organization that happens to be politically aligned with him and not release the videos to the media generally at the same time. This is not like granting an exclusive interview; this is providing a valuable government resource exclusively to one news outlet and discriminating against others, which flies in the face of First Amendment values.

The Speaker’s release of security footage exclusively to Tucker Carlson is pure and simple using congressional resources for partisan gamesmanship – the very type of polarizing gamesmanship that has caused such damage to the public’s perception of the integrity of Congress. This undermining of the safety and integrity of Congress seems contrary to Rule XXII(1), “Code of official conduct,” which reads in part:

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

For these reasons, we ask that the Office of Congressional Ethics investigate whether the selective release of the Jan. 6 security footage on an exclusive basis by House Speaker Kevin McCarthy constitutes a violation of congressional rules.

⁵ Jacqueline Alemany, Marianna Sotomayor and Leigh Ann Caldwell, “McCarthy defends Carlson’s access to Jan. 6 footage, calls media ‘jealous,’” *Washington Post* (Feb. 28, 2023), available at:

<https://www.washingtonpost.com/politics/2023/02/28/kevin-mccarthy-tucker-carlson-jan-6-footage/>

⁶ Melanie Zanona, Manu Raju and Alayna Treene, “Top Republicans question McCarthy over release of January 6 footage as speaker vows deliberate approach,” *CNN* (Feb. 28, 2023), available at:

<https://www.cnn.com/2023/02/27/politics/kevin-mccarthy-january-6-footage-reaction/index.html>