

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

September 5, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

We received your August 11, 2023, letter.¹ Let us be clear. The Committee sees your allegations of supposed ethical improprieties as nothing more than spurious and defamatory attacks on a member of the Committee's professional staff who has an impeccable reputation for honesty and integrity and who at all relevant times has acted professionally and ethically in carrying out the Committee's work. Your continued attacks on the staff member's integrity and character, which you maliciously leaked to the media last month,² have no merit and the Committee rejects them wholesale. You have offered no actual evidence to support any of your allegations, and your shifting explanations as to the precise ethical improprieties demonstrate that they are merely pretexts to intimidate our staff and chill our oversight work. Your attacks on the Committee's professional staff must stop immediately. Any further effort to advance these meritless allegations in any setting or any continued action to harass our staff with frivolous allegations will be seen for what it is—a desperate attempt to deliberately obstruct the Committee's oversight—and we will hold you responsible.

The accusations in your August 11 letter, like the other ethical allegations you have leveled previously, are vague, conclusory, and baseless. Your August 11 letter generally alleges without evidence that a Committee staff member has misused, or will in the future misuse, certain information in violation of professional obligations. There is no merit to this allegation. The only specific instance you cite—a non-public briefing given by FTC staff to Committee staff—concerned a topic the FTC affirmatively voted to disclose and the questions posed at that the briefing were based on information presented during the briefing and drawn from general

¹ See Letter from Lina Khan, Chair, Federal Trade Commission, to Jim Jordan, Chair, House Judiciary Committee (August 11, 2023).

² See Letter from Jim Jordan, Chair, House Judiciary Committee, to Lina Khan, Chair, FTC, 1 (July 28, 2023).

litigation experience and knowledge of the FTC's operations.³ You have provided no real evidence of any misuse of confidential information during that interaction or any other. In fact, although the Committee has engaged with the FTC on a number of occasions, including a phone conversation with your director of congressional relations to obtain more information about the FTC's basis for these allegations,⁴ at no time has the FTC provided any substantive examples of misuse of confidential information.

Your August 11 letter also suggests that "identifying topics for Commission document and interview requests, names of Commission employees to be interviewed, or questions to ask those employees" would all involve using nonpublic information to which Rule of Professional Conduct 1.6 applies.⁵ Curiously, despite writing previously to level ethical allegations, this letter is the first time you have raised Rule 1.6 and made this argument—perhaps because your position is nonsensical. While the Committee has identified issues of interest, and individuals for transcribed interviews, relating to various topics of concern at the FTC,⁶ the Committee developed interest in and identified these and other topics based on public reporting and its investigative work to date, not through improper access to any particular information. Some of the Committee's requests on these topics even predate the tenure on the Committee of the staff member you are targeting for harassment.

In short, none of the topics of interest to the Committee are predicated on nonpublic information, and the Committee's requests for documents and information are based on publicly available information. Similarly, the identities of individuals the Committee has asked to interview are all publicly available.⁷ As one example, FTC managers' involvement in merger-related enforcement makes them natural fits for interviews on topics concerning your mismanagement of the agency and the resulting decline in staff morale as well as merger review.⁸ The same is true of all other employees who the Committee seeks to interview, given public information or reporting about them. Although the Committee has not yet begun transcribed interviews of FTC employees, questions can be developed without special access to nonpublic information. In short, even if Rule 1.6 applied here as you allege, the Committee's oversight of the FTC is not reliant on nonpublic information that would implicate the Rule.

³ Although you also allege that the Committee's staff member declined to recuse from matters in which you believe he possesses nonpublic information, you have provided no specific evidence whatsoever of any breach of confidentiality with respect to those matters.

⁴ During this phone conversation, the FTC's director of congressional relations surprisingly stated she had no awareness of the FTC's allegations of ethical improprieties leveled against Committee staff or the basis for the allegations. As a result, the Committee asked that the FTC stop making baseless accusations and indicated an openness to discussing the matter further. The FTC's director of congressional relations never followed up.

⁵ Letter from Lina Khan, Chair, FTC to Jim Jordan, Chair, House Judiciary Committee, 1 (August 11, 2023).

⁶ See, e.g., Letter from Jim Jordan, Chair, House Judiciary Committee, to Lina Khan, Chair, FTC (July 17, 2023) (outlining "Topics of Oversight" for each interviewee).

⁷ See, e.g., *Inside the Bureau of Competition*, FTC, <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-competition/inside-bureau-competition> (listing attorneys employed in Merger Divisions I-IV that the Committee has requested for transcribed interviews).

⁸ Letter from Jim Jordan, Chair, House Judiciary Committee, to Lina Khan, Chair, FTC (July 17, 2023).

It is telling that your August 11 letter’s reference to Rule 1.6 is new. In prior communications you referenced 5 C.F.R. § 2635.703(a)—a provision that is clearly inapt here. Even if applied to a former FTC employee, the provision would not make it an “improper” use of nonpublic information to aid a Congressional committee in its oversight of the FTC.⁹ Relatedly, such use of nonpublic information—even had it occurred here—would not be a disclosure “made for the purpose of furthering a *private* interest.”¹⁰ The Committee’s oversight of the FTC advances a *public* interest. That your precise explanation for this supposed ethical violation has shifted over time speaks loudly to its pretextual nature.

Finally, if the position you are effectively taking—that a recent FTC employee now working for Congress is generally ethically barred from conducting oversight of the FTC—is correct, then you also have violated the relevant ethical standards. Before working at the Committee, you served as an advisor to then-Commissioner Rohit Chopra at the FTC. At the FTC, according to public information, you worked on issues concerning FTC policy and enforcement—relevant to specific companies and industries—and you would have had access to confidential FTC material related to those issues. During your subsequent employment with the Committee, you investigated and criticized the FTC’s work regarding those same types of issues—presumably armed with confidential information you obtained from your time at the FTC. As a Committee staff member, you were part of a team that requested and accessed troves of information from the FTC and then wrote a report criticizing the FTC’s conduct based on the information you received.¹¹ If we applied your own standard to your actions, it leads to the conclusion that you too have misused confidential information and violated Rule 1.6.

* * *

Based on your conduct to date, it appears as though you fundamentally misunderstand the relationship between the Committee and the FTC. The FTC does not oversee the Committee. Rather, as we have repeatedly explained, the Committee has the authority and the jurisdiction to conduct oversight of the FTC, and your suggestion that some of the Committee’s oversight is not “legitimate” is unfounded.¹² The Supreme Court has explained that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”¹³ Rule X of the Rules of the House of Representatives authorizes the Committee to conduct oversight on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies” to inform potential legislative reforms.¹⁴ The matters on which the Committee is conducting oversight are indisputably “subject[s] on which legislation could be had.”¹⁵

⁹ See 5 C.F.R. § 2635.703(a).

¹⁰ See 5 C.F.R. § 2635.703 (Example 4) (emphasis added).

¹¹ See generally *H. Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. On the Judiciary*, Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations (Oct. 2020).

¹² Letter from Lina Khan, Chair, FTC to Jim Jordan, Chair, House Judiciary Committee, 1 (August 11, 2023).

¹³ See, e.g., *Trump v. Mazars LLP*, No. 19-715 at 11 (U.S. slip op. July 9, 2020) (internal quotation marks and citations omitted).

¹⁴ Rules of the U.S. House of Representatives, R. X (2023).

¹⁵ See, e.g., *Mazars*, No. 19-715 at 12 (internal quotation marks and citations omitted).

The remarkably hostile nature of your response to our oversight is extremely concerning and gives rise to the perception that you are attempting to shirk from oversight of the FTC. You have to date defied a subpoena to produce material relating to the FTC's harassment of Twitter in wake of Elon Musk's acquisition of the company. In addition, your August 11 letter ignored the Committee's requests for documents or communications concerning your responsiveness to congressional oversight. Please provide the documents and communications requested in our July 28 letter as soon as possible, but no later than 5:00 p.m. on September 19, 2023. If you do not produce all responsive material by that time, the Committee may be forced to consider compulsory process.

In addition, given your continuing escalation of frivolous allegations against the Committee, please identify every FTC employee who drafted, edited, reviewed, commented, or otherwise handled your correspondence dated June 14, July 26, and August 11, and preserve all of their documents and communications relevant to these employees' work on each letter or on the FTC's responses to the Committee's requests for transcribed interviews. Obstructing a congressional investigation is a crime. Any person who "corruptly . . . or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede . . . due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress . . . [s]hall be fined under this title, [and] imprisoned not more than 5 years."¹⁶ If you do not cease your efforts to harass and intimidate our staff with spurious and pretextual ethics allegations, the committee will refer you to the Department of Justice for criminal prosecution. The statute of limitations for prosecuting violations of this statute is five years.¹⁷

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

¹⁶ 18 U.S.C. § 1505. *See also* 18 U.S.C. 1515(b) ("As used in section 1505, the term 'corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.").

¹⁷ 18 U.S.C. § 3282.