

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

April 20, 2015

The Honorable Richard J. Griffin
Deputy Inspector General
Office of the Inspector General
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Dear Deputy Inspector General Griffin:

I write to reiterate again my outstanding request for the production of the Department of Veterans Affairs Office of Inspector General's (VA OIG) case file gathered in the course of its health care inspection of the Tomah VA Medical Center (Tomah VAMC), as well as copies of the 140 previously-unreleased VA OIG healthcare inspections. As noted several times, the Committee seeks to work collaboratively with the VA OIG to arrange for the production of the case file while protecting sensitive patient information.

The Committee is investigating allegations of veteran deaths at the Tomah VAMC, retaliation against whistleblowers, and a culture of fear among the employees at the facility that date back almost a decade. In the course of this work, the Committee has become aware that the VA OIG conducted a multi-year inspection of the facility, examining similar issues and many of the same individuals.¹ This inspection was administratively closed without publication and apparently without your knowledge or approval. Given these circumstances, robust congressional oversight is needed to bring transparency and accountability to the Tomah VAMC, the VA, and the VA OIG.

Over the past two months, the Committee has made several attempts to accommodate the VA OIG's stated concerns about producing the contents of the case file. Since then, the VA OIG has not made a meaningful effort to fully comply with the Committee's request and has instead continued to assert general barriers to compliance. As detailed in my letter to you dated March 11, 2015, the VA OIG has not articulated any constitutional or statutory basis that serves as an absolute barrier to compliance with my request.² To date, the VA OIG has asserted no privilege on this material and has declined to produce any of the case file other than a limited, self-selected subset of "background" information.

For these reasons, I reiterate my request for the production of the case file pertaining to the VA OIG's health care inspection of the Tomah VAMC and the 140 previously-unreleased

¹ Meeting between Comm. staff & Catherine Gromek, John Daigh, & Alan Mallinger (Feb. 4, 2015).

² Letter from Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs to Richard J. Griffin, VA Office of Inspector General (Mar. 11, 2015).

health care inspections your office has completed since 2006. The Committee will accept production of the case file with limited, appropriate redactions for sensitive veterans' health information. If you do not fully comply with this request by 5:00 p.m. on April 23, 2015, the Committee will have no choice but to consider the use of compulsory process to obtain the case file.

The Committee has made multiple attempts to accommodate the VA OIG's specific concerns and the VA OIG has declined to engage with specificity

On February 4, 2015, Committee investigators met with Dr. John Daigh, the Assistant Inspector General for Healthcare Inspections; Dr. Alan Mallinger, a Senior Physician in the Office of Healthcare Inspections; and Catherine Gromek, the VA OIG's Congressional Relations Officer, to discuss the VA OIG's Tomah healthcare inspection.³ During this meeting, Committee staff learned of – and requested – the VA OIG's case file pertaining to the Tomah VAMC. After Ms. Gromek raised the possibility of general concerns with producing the case file, Committee staff stated that the Committee would work with the VA OIG to accommodate any concerns about producing the documents.⁴

On February 11, 2015, Committee staff wrote to Ms. Gromek inquiring about the case file.⁵ In this correspondence, Committee staff again reiterated the Committee's willingness to work with the VA OIG to resolve concerns about particular documents.

On February 18, 2015, Committee staff met with VA OIG staff, including Maureen Regan, the Counselor to the Inspector General – at the VA OIG's request – for what the Committee believed would be a collaborative effort to “work with [the VA OIG] to facilitate the production” of the case file.⁶ During this meeting, Committee staff again reiterated the Committee's willingness to accommodate the VA OIG's particularized concerns about individual documents in the case file. Ms. Regan declined to discuss any documents with particularity and refused to share a list of “categories” of the documents in the case file, of which Committee staff requested a copy to better inform the discussion.

Following this meeting, Committee staff emailed Ms. Gromek to reiterate the Committee's desire to work collaboratively with the VA OIG in addressing its particularized concerns about specific documents.⁷ In this email, Committee staff requested the “categories” list to inform further accommodation with the VA OIG about its particularized concerns about documents in the case file.

On February 19, 2015, Ms. Gromek replied to Committee staff: “[W]e are looking through the documents in the background category and should be able to provide you with some

³ Meeting between Comm. staff and Dr. John Daigh, Dr. Alan Mallinger, and Catherine Gromek (Feb. 4, 2015).

⁴ *Id.*

⁵ E-mail from Comm. staff to Catherine Gromek (Feb. 11, 2015).

⁶ Meeting between Comm. staff and Catherine Gromek, Maureen T. Regan and Darryl Joe (Feb. 18, 2015).

⁷ E-mail from Comm. staff to Catherine Gromek (Feb. 18, 2015).

documents on Monday [February 23rd].⁸ Ms. Gromek offered no further information in response to the Committee staff's request for clarification, and the Committee received no documents from the VA OIG on February 23, 2015.

On February 25, 2015, I wrote to you to request your cooperation with the Committee's investigation and to ask that you produce the Tomah VAMC case file.⁹ On February 27, 2015, you replied in a letter with your general concerns about producing the Tomah VAMC case file.¹⁰ Your letter cited the Inspector General Act, the Privacy Act, and veterans-specific healthcare statutes as general barriers to producing the case file. However, your letter did not identify with particularity any specific concerns about specific documents in the case file. The same day, the VA OIG provided a limited, self-selected subset of so-called "background" material from the case file.

On March 2, 2015, I met with you – at your request – to discuss the Committee's request for the production of the Tomah VAMC case file.¹¹ Again, you raised generalized concerns about producing the case file, without specifying any particularized concerns about specific documents in the case file.

On March 11, 2015, I wrote to you to address your stated concerns about producing the Tomah VAMC case file and to reiterate my request for the entire case file.¹² This letter detailed the Committee's efforts to accommodate your concerns about producing the case file and explained why your generalized concerns do not present an absolute barrier to compliance with my request. Specifically, I explained that the Inspector General Act and the Privacy Act, as well as the statutes specific to veterans healthcare, 38 U.S.C. §§ 5701 and 5075, contain express exemptions for disclosing information to Congress. I also reiterated the Committee's willingness to work with the VA OIG to alleviate its concerns through limited redactions and *in camera* reviews. In a final attempt toward accommodation, I offered to accept a "detailed list of the contents of the case file to inform additional staff-level discussions about the VA OIG's particularized concerns for each document and options to alleviate those concerns."¹³ I requested that you transmit the document to the Committee by March 16 and schedule a staff-level meeting on the issue by March 20.¹⁴

On March 16, 2015, the Committee received a redacted list of the "categories" of information contained in the VA OIG's Tomah case file.¹⁵ Upon receipt, Committee staff

⁸ E-mail from Catherine Gromek to Comm. staff (Feb. 19, 2015).

⁹ Letter from Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs to Richard J. Griffin, VA Office of Inspector Gen. (Feb. 25, 2015).

¹⁰ Letter from Richard J. Griffin, VA Office of Inspector Gen., to Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs (Feb 27, 2015).

¹¹ Meeting between Richard J. Griffin and Ron Johnson (Mar. 2, 2015).

¹² Letter from Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs to Richard J. Griffin, VA Office of Inspector Gen. (Mar. 11, 2015).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ E-mail from Catherine Gromek to Comm. staff (Mar. 16, 2015).

inquired about the bases of the redactions.¹⁶ Ms. Gromek replied that her “understanding is they are names of the people that we interviewed.”¹⁷ After Committee staff asked for the reason supporting the redactions,¹⁸ Ms. Gromek replied, “I believe the Privacy Act as outlined in the [VA OIG’s] February 27 letter.”¹⁹ Committee staff notified Ms. Gromek that the Privacy Act contains an exemption for disclosing information to Congress and asked for an unredacted list of the contents of the Tomah case file.²⁰ Ms. Gromek did not respond.

On March 24, 2015, Committee staff conducted a phone call with staff of the VA OIG for the purpose of discussing “the VA OIG’s particularized concerns for each document [in the Tomah case file] and options to alleviate those concerns.”²¹ During this call, Committee staff again reiterated the Committee’s willingness to accept limited redactions and *in camera* reviews of some material to alleviate the VA OIG’s specific concerns about particular documents. Committee staff attempted to work item by item through the “categories” list – provided by the VA OIG precisely for this purpose – to understand the VA OIG’s specific concerns about particular documents and discuss options for further accommodation.

The VA OIG staff, however, declined to discuss any particularized concerns about specific documents, instead repeating the same general barriers outlined in your letter of February 27, 2015. The VA OIG staff indicated that they had not yet reviewed the entire contents of the case file, although the meeting was called precisely to discuss the contents of the case file and despite having several weeks to do so. The VA OIG staff also argued, incorrectly, that the Committee must particularize its need for each document in the case file – a difficulty given the VA OIG’s refusal to provide a detailed list of the contents of the case file and the presence of redactions on the “categories” document that was provided.

Since the phone call of March 24, 2015, the Committee has received no further indication from the VA OIG about whether it will begin to comply with my request for the Tomah VAMC case file. Despite two months of trying to understand the VA OIG’s particular concerns about specific documents in the case file and several attempts at accommodation, the Committee has received just a limited, self-selected subset of “background” information from the case file. The VA OIG continues to withhold an overwhelming portion of the material contained in the case file.

There is no absolute barrier to the production of the Tomah VAMC case file

The federal statutes you cite as barriers to your compliance with my request for the Tomah VAMC case file – the Privacy Act,²² the Inspector General Act,²³ 38 U.S.C. § 5701, and

¹⁶ E-mail from Comm. staff to Catherine Gromek (Mar. 16, 2015).

¹⁷ E-mail from Catherine Gromek to Comm. staff (Mar. 16, 2015).

¹⁸ E-mail from Comm. staff to Catherine Gromek (Mar. 16, 2015).

¹⁹ E-mail from Catherine Gromek to Comm. staff (Mar. 16, 2015).

²⁰ E-mail from Comm. staff to Catherine Gromek (Mar. 16, 2015).

²¹ Letter from Ron Johnson, S. Comm. on Homeland Sec. & Gov’t Affairs to Richard J. Griffin, VA Office of Inspector Gen. (Mar. 11, 2015).

²² 5 U.S.C. § 552a.

²³ 5 U.S.C. § 1 et. seq.

38 U.S.C. § 5705 – each contain an express exemption allowing for the disclosure of information to Congress. In addition, as explained in my letter of March 11, 2015, the IG Act makes clear that inspectors general are considered to be separate entities from the agencies they oversee.²⁴ I do not believe there to be any reason why the VA OIG must seek the approval of the VA to disclose to the Committee material that is in the custody and control of the VA OIG.

The IG Act specifically states that nothing in the Act “shall be construed to authorize or permit the withholding of information from Congress, or from any committee or subcommittee thereof.”²⁵ Other inspectors general have provided information to Congress, including material with Executive Branch confidentiality interests. Most recently, at my request, the Inspector General of the Department of Homeland Security (DHS OIG) released hundreds of source documents supporting its recent report into the EB-5 visa program.²⁶ The DHS OIG released this material, in its own words, “to be transparent to both the public and Congress.”²⁷

As I have repeatedly explained, the Committee has requested the VA OIG case file as a part of its investigation into the Tomah VAMC. The VA OIG must comply with the request or explain with particularity the reasons that it cannot produce the documents. To date, the VA OIG has not offered any particularized concerns about specific documents that the Committee has not been unwilling to accommodate. The VA OIG has articulated no claims of privilege as bases for withholding the documents. In sum, therefore, my request for the production of the Tomah VAMC case file remains outstanding despite numerous attempts by the Committee to reach accommodation with the VA OIG.

Conclusion

I am deeply troubled by the VA OIG’s noncooperation with the Committee’s oversight efforts of the VA and the VA OIG. The Committee’s inability to obtain the Tomah VAMC case file not only hinders the Committee’s investigation of the Tomah VAMC, but also prevents the Committee’s ability to craft potential legislative solutions to enhance the transparency and accountability of Inspectors General.

In addition, during this investigation, the Committee has learned of the existence of 140 other healthcare inspections – similar in nature to the nonpublic Tomah VAMC inspection – that the VA OIG closed administratively. I have written to you to request that you produce, without redactions, these 140 previously-unreleased health care inspections your office has completed since 2006.²⁸ Although Committee staff has attempted to work with the VA OIG to facilitate production of the inspections, the Committee’s accommodation efforts have not been reciprocated and my request for the 140 inspections remains outstanding.

²⁴ 5 app. U.S.C. §§ 2, 6.

²⁵ 5 U.S.C. § 5(e)(3).

²⁶ Letter from Ron Johnson, S. Comm. Homeland Sec. & Gov’t Affairs to John Roth, Dep’t Homeland Sec. Office of Inspector Gen. (Mar. 27, 2015).

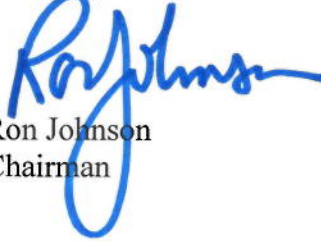
²⁷ Dep’t of Homeland Sec. Office of Inspector Gen., IG Releases Documents Underlying Investigation of Employee Complaints Regarding Management of USCIS’ EB-5 Program (Apr. 9, 2015).

²⁸ Letter from Ron Johnson, S. Comm. on Homeland Sec. & Gov’t Affairs to Richard J. Griffin, VA Office of Inspector General (Mar. 17, 2015).

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I request that you produce the VA OIG's Tomah VAMC case file and unredacted copies of the 140 previously-unreleased health care inspections the VA OIG has completed since 2006 immediately, but no later than 5:00 p.m. on April 23, 2015. If you have not fully complied with this request by that time, the Committee may consider the use of compulsory process. Thank you for your attention to this manner.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Minority Member