

JOHN McCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

# 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

June 16, 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 Mr. Griffin:

I write to express serious concerns about the Department of Veterans Affairs Office of Inspector General's (VA OIG) decision to brief Members of Congress on the VA OIG's findings of its investigations into the treatment of veterans Thomas Baer and Jason Simcakoski before providing the same information to the families of the deceased veterans. While I appreciate the VA OIG's willingness to investigate the treatment of Mr. Baer and Mr. Simcakoski, the grieving families of these veterans deserve answers to their questions. Accordingly, I ask that you reconsider your decision to deny information about your findings to the Baer and Simcakoski families.

On June 2, 2015, Catherine Gromek, VA OIG's Congressional Relations Officer, informed the Committee that the VA OIG was nearing completion of its reviews of the Baer and Simcakoski cases and asked that the Committee secure the approval of the next-of-kin to disclose the findings to Congress.<sup>1</sup> The Committee asked whether the VA OIG had asked the families directly,<sup>2</sup> and Ms. Gromek responded, "we usually ask the congressional office if they want to [contact the families] and usually they want to."<sup>3</sup> In order to facilitate the prompt release of information, Committee staff reached out to the families.

When the Committee staff contacted the families, members of both the Baer and Simcakoski families expressed an expectation that their families would receive information from the VA OIG on the findings of its reviews. Throughout the Committee's discussions with both the Baer and Simcakoski families, they have expressed frustrations with the VA OIG's lack of transparency with the families as it has investigated the deaths of their loved ones.

The Committee informed Marvin Simcakoski, the father of Jason Simcakoski, about the VA OIG's request for approval to discuss the findings with Congress. Mr. Simcakoski expressed concerns about whether his family would also receive the results of the VA OIG's investigation. According to Mr. Simcakoski, members of the VA OIG had told him that the investigation was

---

<sup>1</sup> E-mail from Catherine Gromek to Comm. staff (June 2, 2015).

<sup>2</sup> E-mail from Comm. staff to Catherine Gromek (June 2, 2015).

<sup>3</sup> E-mail from Catherine Gromek to Comm. staff (June 2, 2015).

nearing its end, but there has been a lack of clarity from the VA OIG about whether the family would receive the results of the VA OIG's review of Jason Simcakoski's treatment at the Tomah VAMC.

Likewise, according to Thomas Baer's daughter, Candace Delis, the VA OIG conducted a two-hour telephone interview of her and her mother on February 19, 2015.<sup>4</sup> At the conclusion of the two hours, the VA OIG reportedly ended the interview without answering any of the questions the family had prepared, despite assurances that the family would have the opportunity to ask questions of their own. Ms. Delis subsequently submitted questions to VA OIG employees via email.<sup>5</sup> For over three months, Ms. Delis has not received answers to her questions, nor has the VA OIG updated her on the status of its investigation into her father's death.<sup>6</sup>

When the Committee contacted Ms. Delis on the VA OIG's behalf, she expressed significant frustrations with the VA OIG's lack of communication regarding her father's case and she made the reasonable request to be present when the VA OIG briefed congressional staff. Like Ms. Delis, the Committee agrees that the families have a right to know what happened to their loved ones. Committee staff then made the request to Ms. Gromek that Ms. Delis be present when the VA OIG briefs committee staff.

Ms. Gromek's response is disappointing. She replied that "the offer to brief Senator Johnson and Committee staff is a courtesy to him as one of two congressional requesters of the report. It is *inappropriate for Baer family members to attend the briefing* because of their pending claim filed under the Federal Tort Claims Act."<sup>7</sup> She added: "[I]f the Baer family's attendance is a condition for the briefing, we respectfully withdraw our offer to brief Senator Johnson and Committee staff."<sup>8</sup> On the same day that Ms. Gromek disallowed Ms. Delis's participation in the congressional briefing, Ms. Delis and her mother received a letter from Darryl Joe, the VA OIG Chief Release of Information Officer, denying the family's FOIA request for OIG documents relating to her father's death.<sup>9</sup> The VA OIG, it appears, is unwilling to provide *any* information to Mr. Baer's family.

The VA OIG's treatment of these families is deeply troubling. No family should be forced to file a FOIA request to receive even the smallest modicum of information on the medical treatment of a deceased loved one. The VA OIG's office's denial of the Baer family's FOIA request is yet another example of the VA OIG's lack of independence and transparency about its work at the Tomah VAMC. It is further troubling that the VA OIG is denying the Baer family access to information about Thomas Baer due to legal concerns of the VA. The Baer family's claim under the Federal Tort Claims Act is pending *against the VA, not the VA OIG*.

---

<sup>4</sup> E-mail from Candace Delis to Comm. staff (June 1, 2015).

<sup>5</sup> E-mails from Candace Delis to VA OIG employees (Mar. 12, 2015 and June 1, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> E-mail from Catherine Gromek to Comm. staff (June 8, 2015) (emphasis added).

<sup>8</sup> *Id.*

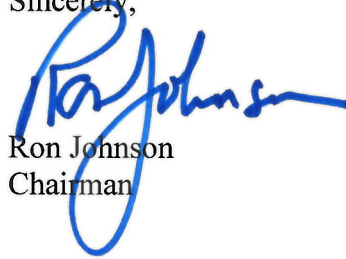
<sup>9</sup> Letter from Darryl Joe, Chief, Release of Information Office, Dep't of Veterans Affairs, Office of Inspector General to Candace Baer-Delis and Suzette Baer, June 8, 2015.

The Honorable Richard J. Griffin  
June 16, 2015  
Page 3

Thus, it appears that the VA OIG is placing the legal interests of the VA—the Department that the VA OIG is charged with overseeing—ahead of the interests of the grieving families of deceased veterans.

The Baer and Simcakoski families deserve answers about the treatment of their loved ones at the Tomah VAMC. While I look forward to the Committee receiving information about the VA OIG's investigations into the treatment of Thomas Baer and Jason Simcakoski, I believe that the families must have access to the same information. I hope you will reconsider your decision to deny information about your findings to the Baer and Simcakoski families. Thank you for your attention on this important matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member