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United States Senate

COMMITTEE ON

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

June 22, 2015

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

The Honorable John W. Vaudreuil
United States Attorney
United States Attorney's Office for the Western District of Wisconsin
222 West Washington Avenue Suite 700
Madison, WI 53703

Dear Mr. Vaudreuil:

The Committee on Homeland Security and Governmental Affairs has been investigating the tragedies that have occurred at the Department of Veterans Affairs Medical Center in Tomah, Wisconsin (Tomah VAMC). As part of its investigation, the Committee has requested information from law-enforcement agencies, including information from the Drug Enforcement Administration (DEA) about potential drug diversion at the Tomah VAMC.¹ The Committee has also learned that the Federal Bureau of Investigation (FBI) conducted an investigation in or around March 2015 that resulted in a prosecutorial opinion from your office. Accordingly, I write to respectfully request information about this prosecutorial opinion and your office's work concerning the Tomah VAMC.

According to FBI personnel, I understand that the FBI's Milwaukee Field Office began interviewing individuals connected with the Tomah VAMC in mid-February 2015.² After the FBI conducted these interviews, it presented the evidence to the United States Attorney's Office for the Western District of Wisconsin.³ At the end of March 2015, the Western District of Wisconsin sent a prosecutorial opinion to the Justice Department's (DOJ) Public Integrity Section for review.⁴ This opinion was based strictly on what the FBI gathered in its work from February to March 2015.⁵

The FBI later notified me that it determined, in consultation with your office, that it would not pursue public corruption charges. According to a letter from the FBI dated April 21, 2015:

The Federal Bureau of Investigation (FBI) has reviewed available information and conducted further investigation of those allegations [of public corruption at the Tomah Veteran's Administration Medical Center]. In coordination with the

¹ Letter from Ron Johnson, Comm. on Homeland Sec. & Gov't Affairs, to Michelle Leonhart, Drug Enforcement Admin. (Jan. 28, 2015 and Mar. 3, 2015).

² Phone conversation between FBI staff and Comm. staff (May 14, 2015).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

United States Attorney's Office, Western District of Wisconsin, the FBI has determined that there is insufficient predication to pursue an FBI investigation at this time.⁶

Since learning about the possible existence of a prosecutorial opinion from your office relating to the Tomah VAMC, the Committee has sought to gain more information. However, communications to knowledgeable officials in the Western District of Wisconsin have been redirected to the Justice Department's Office of Legislative Affairs (OLA) in Washington, D.C. OLA, in turn, has refused to provide any information to the Committee, claiming that an "ongoing investigation" prohibited their cooperation—without providing any constitutional, statutory, or regulatory basis for its assertion.⁷ Because the FBI has informed the Committee that its work with your office is closed, it is unclear to what "ongoing investigation" OLA is referring.

Transparency is greatly needed across every federal agency involved with the tragedies and the investigations of the Tomah VAMC. As the field hearing that I convened in Tomah in March 2015 demonstrated, the families of our veterans continue to seek information on what occurred and why officials within the VA, among others, did not act.⁸ I believe full transparency at every level in this investigation is necessary. In particular, some of the families with whom the Committee has spoken question the ability of law enforcement to pursue a fair and thorough criminal investigation of what happened at the Tomah VAMC.

In an effort to bring transparency to the families in Wisconsin and accountability to the VA, I request you please produce the prosecutorial opinion developed by the U.S. Attorney's Office for the Western District of Wisconsin concerning the Tomah VAMC. Because the FBI has informed the Committee that it has completed its investigative work, I do not foresee any ongoing law-enforcement interests that prevent you from producing this material. In addition, to assist the Committee in understanding the circumstances of this matter, I respectfully request that you provide the following information:

1. Has the Western District of Wisconsin ever reviewed allegations of drug diversion connected to the Tomah VAMC? If yes, please provide a description and the disposition of those cases.
2. Has the Western District of Wisconsin ever reviewed allegations of public corruption connected to the Tomah VAMC? If yes, please provide a description and the disposition of those cases.

⁶ Letter from Stephen D. Kelly, FBI, to Ron Johnson, S. Comm. on Homeland Sec. & Governmental Affairs (Apr. 21, 2015).

⁷ Phone call between Ken Kellner, U.S. Dep't of Justice, and Comm. staff (May 14, 2015).

⁸ "Tomah VAMC: Examining Quality, Access, and a Culture of Overreliance on High-Risk Medications"; J. Hearing of the S. Comm. on Homeland Security & Gov't Affairs & the H. Comm. on Veterans' Affairs, 114th Cong. (2015)

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3. After my office contacted the Western District of Wisconsin, did DOJ's Office of Legislative Affairs instruct you or any member of your staff to not communicate with the Committee?

Please provide this information as soon as possible, but no later than 5:00 p.m. on June 30, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."⁹ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."¹⁰

If you have any questions about this request, please contact Brian Downey of the Committee staff at (202) 224-4751. Thank you for your attention to this important matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Enclosure

⁹ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁰ S. Res. 73 § 12, 114th Cong. (2015).