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January 29, 2016

VIA ELECTRONIC TRANSMISSION

Linda A. Halliday
Acting Inspector General
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Acting Inspector General Halliday:

A recent article made public the serious misconduct of a Department of Veterans Affairs (VA) Deputy Inspector General (IG)—who at one time served as Acting IG.¹ In 2008, this misconduct was investigated by the Department of the Interior Office of Inspector General (DOI-OIG) through a process of the Council of the Inspectors General on Integrity and Efficiency Integrity Committee. The DOI-OIG produced a report with findings, which was provided to the VA-OIG, but the Deputy IG retired before the conclusion of any disciplinary process.

There are many troubling aspects to this incident. In particular, prior to the 2008 misconduct, the Deputy IG had been disciplined in 2003 for having unauthorized sexually explicit materials on his work computer but was nevertheless promoted to be the VA's Acting IG. An additional issue of concern is the fact that the report of investigation of the 2008 misconduct has not been produced pursuant to the Freedom of Information Act (FOIA), despite a pending 2013 request to DOI-OIG and requests made directly to the VA-OIG in 2012. DOI-OIG officials believe that the report it authored should be produced pursuant to FOIA; however, the VA-OIG, reportedly, does not. To date, not even a redacted copy of the report has been publically released despite

¹ Luke Rosiak, *Top VA Watchdog Resigned After Being Caught Masturbating On The Job*, The Daily Caller (Dec. 6, 2015, 8:24PM), <http://dailycaller.com/2015/12/06/va-cop-chose-the-wrong-beat/>.

a clear public interest. It is not clear why the report has not been produced pursuant to FOIA.

The report at issue involved substantiated misconduct by a high-ranking official. As the *United States Department of Justice Guide to the Freedom of Information Act* makes clear, as “a general rule [] demonstrated wrongdoing of a serious and intentional nature by high-level government officials is of sufficient public interest to outweigh almost any privacy interest of that official.”² This rule applies in the context of both FOIA exemptions 6 and 7(C).³ Indeed, the President has declared, “The Government should not keep information confidential merely because public officials might be embarrassed by disclosure. . . Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.”⁴

It is extremely troubling that the VA-OIG has failed to release, in any form, a report of substantiated misconduct by a senior, high-ranking official.⁵ This lack of transparency undermines the office of the IG. Unfortunately, transparency problems at the VA-OIG are not new.⁶ However, the VA Inspector General Designate has committed to significantly improving transparency at the VA OIG, stating that he “intend[s] to take a number of steps including looking at . . . if there are reports that are not being made public that should be made public”⁷ Your office should start that process now by reconsidering the release of this report of high-level official misconduct.

In addition, in order to understand the VA-OIG’s justification for failing to produce this report, please provide the following information:

² *United States Department of Justice Guide to the Freedom of Information Act, Exemption 6*, at 64 (Jan. 10, 2014), available at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

³ *Id.* at 64 n.208. This is not to suggest that the names of witnesses or other third parties are not properly redacted in this context.

⁴ Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009).

⁵ To the extent the VA-OIG would argue that the conduct occurred some time ago, any agency argument that the information is stale and no longer relevant cannot be advanced by that agency’s own delay in producing the document.

⁶ See, e.g., Donovan Slack, *VA doesn't release 140 vet health care probe findings*, USA Today (Mar. 8, 2015), <http://www.usatoday.com/story/news/politics/2015/03/08/probes-of-veterans-health-care-often-not-released-to-public/24525109/>.

⁷ *Nomination of Michael J. Missal to be Inspector General, U.S. Department of Veterans Affairs, and the Honorable Carolyn N. Lerner to be Special Counsel, Office of Special Counsel, Before the Senate Comm. on Homeland Sec. and Gov’tal Affairs*, 114th Cong. (2015) (statement of Michael J. Missal, Dep’t of Veterans Affairs, Inspector General Designate), available at <http://www.hsgac.senate.gov/hearings/nomination-of-carolyn-lerner-to-be-special-counsel-of-the-office-of-special-counsel-and-michael-missal-to-be-inspector-general-of-the-department-of-veterans-affairs>.

1. Please list all dates on which the VA-OIG received or was referred a request under FOIA for this report of investigation.
2. Please list the disposition of each request or referral.
3. What is the basis for the VA-OIG's denial of any FOIA request made or denial of any referral from another agency related to this report? What is the basis for the VA-OIG's failure to release the report in redacted form?
4. Please provide all documentation related to any request for this report, including the request, disposition, and justification for any decision, including initial denial and subsequent appeals.
5. Please provide all documentation related to any referral by or consultation with another agency with respect to this report. Please include in this production any correspondence related to a consultation or referral, the basis for the VA-OIG's determination that under FOIA such report is controlled by the VA-OIG, and the justification for denying the public release of such report.
6. Will you reconsider the release of this investigative report?
7. In the last ten fiscal years (i.e., fiscal years 2006 – 2015), how many misconduct investigations of VA-OIG officials have been conducted by outside entities? Please specify the title and rank of each official, who investigated the misconduct, the nature of the misconduct allegations, whether the allegations were substantiated, and the disposition of each investigation including disciplinary action taken.

Please provide your response to these questions no later than February 15, 2016. Should you have any questions, please contact Jay Lim of my Committee staff at (202) 224-5225. Thank you for your cooperation in this matter.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary

cc:

The Honorable Patrick Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security and Government Affairs

The Honorable Thomas Carper
Ranking Member
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