



DEPARTMENT OF VETERANS AFFAIRS
INSPECTOR GENERAL
WASHINGTON DC 20420

June 13, 2014

The Honorable Tom A. Coburn, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Coburn:

Before responding to the specific questions in your June 12, 2014, letter, I would like to take the opportunity to address several issues that you raised. First, and foremost, since April 2014, the Office of Inspector General has been conducting numerous investigations into allegations of the manipulation of waiting times at the Phoenix, Arizona, Healthcare System and nationwide at more than 70 other VA facilities. It is our mission not only to identify the problems but to ensure we obtain sufficient credible evidence to identify the issues, make recommendations for corrective action, and provide sufficient credible evidence to the appropriate officials to hold people accountable, either criminally or administratively, particularly if any veteran has been harmed.

The timing of the subpoena to the Project on Government Oversight (POGO) was due to the fact that we are actively engaged in this massive investigation. As I testified before the Senate Committee on Veterans' Affairs on May 15, 2014, we have been working since the beginning of our investigation with the Department of Justice (DOJ) to ensure that any individuals who engaged in criminal conduct can be prosecuted. As required by the law enforcement authority granted to the Inspectors General, we have coordinated our criminal investigative efforts with the Federal Bureau of Investigation and DOJ concerning each facility. To date we have conducted hundreds of interviews, obtained and are reviewing more than a million e-mails, reviewing hundreds of medical and other records, and reviewing thousands of complaints received through our Hotline, including many from members of Congress. In addition, we have been gathering information from third party sources, using subpoenas when necessary, for the sole purpose of ensuring that we have all the information available to conduct a complete, thorough, and comprehensive review and investigation.

Your statement that "it appears that the Department of Veterans Affairs Office of Inspector General's VA OIG) subpoena may have been issued due to POGO's and the Iraq and Afghanistan Veterans of America's (IAVA) launching of VA Oversight.org." is not accurate. Frankly, we were unaware at the time that POGO and IAVA had established a joint website. What triggered our request for the documents was an article in the *Arizona Republic* reporting that Danielle Brian, the Executive Director of POGO, said that "500 people have contacted the hotline set up for VA whistle-blowers a week ago, and more than a third were employees." Ms. Brian was also quoted as stating that "many of the complainants reported manipulation of wait-time data, apparently orchestrated by middle managers without any directive from headquarters." Confirmation of these allegations by Federal criminal

investigators could lead to felony charges for violations of criminal statutes, such as statutes that prohibit the alteration of Government records or impeding a Federal investigation.

On May 28, 2014, the Counselor to the Inspector General called Mr. Scott Amey, POGO's General Counsel, to request their information. The Counselor explained in great detail the basis for the request. The Counselor followed-up on May 29, 2014, with an e-mail to Mr. Amey, again explaining the need for the records. During the telephone conversation and in the subsequent e-mail, the Counselor explained that the Inspector General Act prohibited the Inspector General from releasing the identities of individuals who complain to the Inspector General. The Counselor also explained that it was our "intention to use the information POGO received to determine whether we have already received complaints from and/or spoken to the individuals who contacted the POGO hotline, and if not, to pursue relevant information they may have provided regarding these issues." The Counselor also advised Mr. Amey that "Given the serious nature of the allegations, time is of the essence in this matter." On Friday, May 30, 2014, POGO responded via e-mail refusing to provide the records. Although POGO offered to talk to us about what POGO was "learning once [they] have a handle on the information that [they] received, which was about 500 tips," POGO also stated that the disclosure would be "limited to types of cases and it will not include any information about the source of information." It was only after we received this response from POGO that we issued the subpoena. The sole reason for issuing the subpoena was to ensure that the Office of Inspector General had all the information available to conduct a thorough and complete investigation of these issues and hold individuals accountable when appropriate. This is our charge and our nation's veterans deserve no less.

What POGO has received are allegations. As we stated in our May 28, 2014, *Interim Report: Review of VHA's Patient Wait Times, Scheduling Practices, and Alleged Patient Deaths at the Phoenix Health Care System*:

Despite the number of allegations, each individual allegation is nothing more than an allegation. We are charged with reviewing the merits of these allegations and determining whether sufficient, credible factual evidence exists to meet the standards required by applicable laws and regulations to hold VA, or specific individuals accountable on the basis of criminal, civil, or administrative law and regulations.

What POGO has received through its hotline are mere allegations. Because the VA OIG is the only entity that has the statutory authority to obtain all records and interview all the individuals to verify or refute allegations, we sought information from POGO to include in our investigation. It is irresponsible for any private organization, such as POGO, to report mere allegations as fact without conducting a complete and thorough investigation.

With regard to confidentiality, the IG Act specifically prohibits the disclosure of the identities of employees and others who disclose information to the OIG. 5 U.S.C. App.7 and 8. We take this responsibility seriously. Since the issue of waiting times at the Phoenix Healthcare System was broadcast on April 9, 2014, we have received more than 10,500 complaints to our Hotline. In addition, numerous members of Congress established hotlines within their districts and have been referring the complaints on a daily basis to my office without redacting the names of the complainants. To date we have received several hundred complaints forwarded by members of

Congress. This demonstrates confidence in the VA OIG, including our ability to maintain the confidentiality of whistleblowers.

Our responses to your seven questions are as follows:

1. *With the large number of problems at VA facilities across the country, why did the OIG issue this administrative subpoena to POGO? Please explain in detail.*

Response: As discussed above, the subpoena was issued in our efforts to obtain all information available to ensure we conduct a thorough and complete investigation of the issues at the Phoenix Healthcare System and other VA medical facilities.

2. *Why does the OIG believe so many VA whistleblowers are seeking other avenues besides the OIG? Please explain in detail.*

Response: The VA OIG does not agree with the statement. Each year the VA OIG Hotline receives about 30,000 complaints, most of which are from individuals or entities who consider themselves whistleblowers. It has been our experience over many years that employees and others often raise their concerns through various channels at the same time, which is encouraged, not prohibited. In addition to the complaints received directly from a complainant, the OIG also receives hundreds of complaints forwarded by members of Congress on behalf of their constituents. The volume of complaints, from employees, veterans, contractors, and other concerned citizens reflects a significant level of confidence in the OIG.

3. *What individual approved the issuance of the OIG subpoena to POGO?*

Response: The subpoena was issued by me as the Acting Inspector General under the authority of Section 6 (a) (4) of the IG Act, 5 U.S.C. App. This section authorizes the IG “to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act” In its letter responding to the VA OIG subpoena, POGO raised First Amendment protections as its basis for refusing to comply with the subpoena. The D.C. Circuit has long held that a subpoena will be enforced regardless of potential First Amendment issues, where the agency seeking the information is conducting an investigation pursuant to its statutory authority.

4. *Has the OIG issued administrative subpoenas to any other private organizations since May 1, 2014? If so, please list the organization and the reason for the issuance of the administrative subpoena.*

Response: The VA OIG has issued administrative subpoenas since May 1, 2014. All subpoenas are issued to third parties and we do not designate the recipient as a “private organization” versus another entity. Because these subpoenas were issued as part of open and ongoing OIG investigations and other reviews, we cannot respond to the second part of this request.

5. *Please provide the number of administrative subpoenas the OIG has issued since 2011.*

Response: The VA OIG has issued more than 1,200 subpoenas since January 1, 2011.

6. *Provide the number of Hotline tips the OIG has received since May 1, 2014.*

- Provide a general breakdown of open/ongoing/closed categories for the Hotline tips.

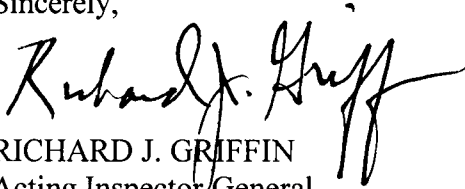
Response: The VA OIG refers to the information submitted to our Hotline as contacts or complaints, not “tips.” Between May 1 and June 11, 2014, the VA OIG Hotline has received approximately 8,000 contacts, of which about 3,000 are still open, meaning no final disposition has been made.

7. *Please provide the number of OIG “letters of inquiry” sent to private organizations*

Response: The VA OIG does not use the term “letters of inquiry” in our work, so we are unable to respond to this request.

If you have any questions regarding this response, please contact Ms. Catherine Gromek, our Congressional Relations Officer, at (202) 461-4527 or catherine.gromek@va.gov.

Sincerely,



RICHARD J. GRIFFIN
Acting Inspector General

Copy to: The Honorable Thomas R. Carper, Chairman
U.S. Senate Homeland Security and Governmental Affairs Committee

The Honorable Phyllis K. Fong, Chair
Council of Inspectors General for Integrity and Efficiency