

United States Senate
WASHINGTON, DC 20510

January 17, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Tanya Bradsher
Deputy Secretary
U.S. Department of Veterans Affairs

Dear Deputy Secretary Bradsher:

I write to remind you of your obligation to clear up statements you and the VA made to the Senate Veterans Affairs Committee (SVAC) during your nomination process. Your nomination to be Deputy Secretary drew significantly more opposition than for any nominee ever confirmed to the position, largely because of the questions that you failed to adequately answer. The Congress deserves answers, and so do the taxpayers.

As part of your SVAC proceedings, you were asked questions for the record by Senator Blackburn in May and additional questions by Senator Moran in June related to your role in the VA's now well-documented mishandling of veterans' personal identifiable information (PII), protected health information (PHI), whistleblower information, and other sensitive data in the VA's VIEWS correspondence system, in violation of federal privacy laws. Your answers were misleading, as this letter will describe.

In addition, Mr. Aaron Scheinberg, VA's Deputy Assistant Secretary for Congressional and Legislative Affairs, circulated a misleading memo to SVAC members on July 12, the day before it voted on your nomination, denying that the VIEWS system was "rife with security issues," and denying that, "thousands of VIEWS files are not being properly treated," even though the VA had long known about widespread privacy issues with the VIEWS system and had already verified that fact with the Office of Special Counsel (OSC).¹ That misleading memo denied verified information I brought to the Committee's attention on May 30, especially the fact that thousands of records were not properly secured in VIEWS, a fact the VA's own July 21, 2023, report to OSC confirmed.² Moreover, you and the VA withheld from the Committee material facts directly relevant to the questions SVAC members raised: that the VA had determined at the beginning of its investigation ordered by the Office of Special Counsel on August 2, 2022, that whistleblower allegations related to VIEWS were completely true, and also that the VA knew about these serious privacy failures since 2019, long before you even started your role as VA's chief of staff in 2021, and three years before whistleblowers approached your office last July.

¹ Email, Aaron Scheinberg to Samantha Gonzalez, July 12, 2023 (5:53 PM), on file with staff.

² Clearly, the VA knew about these issues well in advance of the July 21, 2023, date since the investigation had been ongoing since the August 2, 2022, order by OSC.

Documents I obtained show that the VA communicated to the Office of Special Counsel on May 26, 2023, that it had fully substantiated allegations related to VIEWS at the outset of the investigation ordered by OSC in 2022.³ For reference, your Committee hearing was held five days later, on May 31. Not once did you reveal this material fact when questioned about these privacy issues by two senators under oath, even though these senators questioned you about these specific whistleblower allegations.⁴ Rather than reveal this information, you referenced the ongoing investigation in a way that implied its results were uncertain. For example, in responding to Senator Moran on June 21, you said that, “*if* any sensitive information of these [whistleblowers] was not being properly protected by the VIEWS system, I would expect that to be immediately addressed and promptly remedied as part of the OIT investigation.”⁵ There was no “*if*.” The VA had already “fully substantiated” allegations the whistleblowers made in 2022, that sensitive information was not protected and advised OSC of that fact before you answered.⁶ You need to explain your answer and basis of knowledge, and that of your advisors who aided you in drafting your Committee responses, since the VA knew these facts but failed to reveal them to Congress.

When Senator Blackburn and Senator Moran asked when you first learned about VIEWS privacy issues, you stated that you first learned of the issues when the whistleblowers approached your deputy in July 2022.⁷ However, the July 21, 2023, OSC report revealed that the VA had been aware of these issues with VIEWS since at least July 2019, a full three years before that.⁸ You have offered no explanation as to how it would even be possible that you were not aware of a serious, known privacy issue related to the system under your responsibility for sixteen months before the whistleblowers approached your office in 2022. If your answer was true, this raises a significant question about the VA’s internal processes for providing critical information to senior officials, nominees, and information sharing between VA components, and if the answer was false, it raises the question of whether you or those preparing your answers provided a false material statement to Congress in the midst of an official committee proceeding. It is important for us to assure that you, and those assisting you in your confirmation process,

³ Letter from redacted sender, U.S. Dep’t of Veterans Affairs, to Catherine McMullen, Chief, Disclosure Unit, U.S. Office of Special Counsel, May 26, 2023, on file with staff.

⁴ Cf. U.S. Dep’t of Veterans Affairs, Office of Enterprise Integration, Office of Policy and Interagency Collaboration, 2020 Functional Organization Manual at 7 (noting that Executive Secretariat, which wrote the May 26 letter to OSC confirming the whistleblower allegations, “is VA’s central coordinating point for all staff actions addressed to and emanating from . . . COSVA,” that is, the VA’s Chief of Staff, and that the Executive Secretariat, “[p]repares responses to Members of Congress and reviews testimony,” making it highly likely it reviewed Ms. Bradsher’s responses to questions for the record from the Senate Veterans Affairs Committee.).

⁵ Tanya Bradsher, Nominee to be Deputy Secretary, U.S. Dep’t of Veterans Affairs, responses to Questions from Senator Jerry Moran, Senate Veterans Affairs Committee (June 21, 2023), on file with staff.

⁶ Letter to Catherine McMullen, *supra* n. 3.

⁷ Tanya Bradsher, Nominee to be Deputy Secretary, U.S. Dep’t of Veterans Affairs, responses to Senator Marsha Blackburn, Questions for the Record, Senate Veterans Affairs Committee (June 13, 2023); Tanya Bradsher responses to Senator Moran, *supra* n. 5.

⁸ Dep’t of Veterans Affairs, Report to the Office of Special Counsel, Office of the Executive Secretariat, Report (July 21, 2023) at p. 9, on file with staff.

were candid with the Senate in responding to this question. I therefore request all records⁹ from the VA documenting when all senior officials, including you and your office, first came to know about the VIEWS privacy issue, and how they were informed.

There were also other statements to the Committee that have been called into question by the VA's report to OSC and by contrary information received from whistleblowers. For example, Senator Blackburn asked you about the VIEWS system on May 31, noting that, "whistleblowers [had] provided records asserting that the system is used *to store* extremely sensitive information, including correspondence from members of Congress, confidential whistleblower information, personal identifiable information (PII), and protected veterans' medical records and health information (PHI) . . . [and that this] sensitive information is not being marked as sensitive and segregated from less sensitive documents in the system."¹⁰ Your response, received on June 13, was misleading. You assured the senator that, "[a]ny other user lacking permission who attempts to access a sensitive case cannot see the case information or attachments related to the sensitive matter," and that, "[a]udits are done to make sure information on the VIEWS system is accessed appropriately." You also assured the senator that, "[VIEWS] does not handle medical records, claims, benefits, or financial actions."¹¹ All of these claims have subsequently been called into question.

As to the first of these claims, that VIEWS users were unable to view case information or attachments for cases marked sensitive in VIEWS, the VA's report to OSC revealed that as of the date of the report, July 21, it was true that "when a case has been marked 'sensitive,' only the case owner and explicitly identified users can open the case and view its contents."¹² However, it noted that, "[s]ome associated fields remained searchable and viewable *until very recently* . . . such as the case title and description."¹³ Senator Moran questioned you specifically on this point on June 15, based upon information obtained from credible whistleblowers claiming that your answer was false and that even if a case was properly marked "sensitive," the titles of the email and attachments were still visible, potentially disclosing confidential information. In response, on June 21, you told the Committee that when a case is marked sensitive, unauthorized viewers were not able to view the title of the email or attachment, noting that, "[a] user who is not a member of the specific Case Team will be able to see only the Case ID number and a banner message that they should contact the Case Owner for more information."¹⁴ If this change was part of the changes made in July 2023, your answer was false when it was given on June 21, because if so, the change had not yet been implemented. It is worth noting that even though the VA report doesn't provide the exact date this change was made, it repeatedly refers to the

⁹ "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

¹⁰ Tanya Bradsher response to Questions for the Record from Sen. Blackburn, *supra* n. 7 (emphasis added).

¹¹ *Id.*

¹² Report to the Office of Special Counsel, *supra* n. 8 at p. 7, on file with staff (although the report was released on August 8, it is dated July 21).

¹³ *Id.* (Emphasis added.)

¹⁴ Tanya Bradsher response to Questions from Sen. Moran, *supra* n. 5.

changes made in July as the “recent” changes, or changes that were made “recently,” which corresponds with its description of the changes here. And in any event, even if this change had already been implemented as of the date you answered the Committee, you did not disclose to the Committee the highly relevant fact that this change had only been made, “very recently,” again despite the VA knowing about it for years. I therefore request you provide us with full details on when this change was implemented to the VIEWS system and whether such information would have been viewable in cases marked sensitive as of the date of your answers to the Committee.

As to your claim about VA audits of VIEWS, as noted, when questioned by Senator Blackburn on May 31, you also claimed that the VA performs audits to, “make sure information on the VIEWS system is accessed appropriately.”¹⁵ In follow up questions on June 15, you were asked in more detail about these “audits,” including “[h]ow much of the VIEWS system is audited, and at what frequency” the audits took place.¹⁶ The VA’s report to OSC, dated July 21, however, determined that, “there is no program of auditing or detection in place to measure the effectiveness of applied changes [to VIEWS], or to flag when a user views whistleblower identities and sensitive personal information without authority or fails to protect such information by not setting the appropriate case sensitivity marker.”¹⁷ The report additionally revealed that, “VIEWS CCM has an integrated logging capability that displays changes made to case information and changes made by users, but it does not capture instances where a user simply viewed case information or downloaded files.”¹⁸ Because of the lack of capability to audit for inappropriate access, contrary to your claim, the VA investigator was, “unable to assess the frequency of [] unauthorized access, or even if such access had ever occurred.”¹⁹ Moreover, the report called into questions the VA’s Privacy Impact Assessment (PIA) for VIEWS, which claimed that business and system owners perform “risk mitigations in the form of auditing user activity [in VIEWS].”²⁰ Taken together, this information directly contradicts your claim that the VA conducts audits to determine if information in VIEWS is “accessed appropriately,” an ability that the report notes is not part of VIEWS’ own integrated logging capability or the VA’s available auditing processes.²¹ I request an immediate explanation both for the discrepancy between your answers and the details provided in the VA’s report, as well as when and why the VA ceased to have this audit and logging capability.

Your claim on June 13 that VIEWS “does not handle medical records” also was misleading. Senator Blackburn noted that VIEWS was used “to store” sensitive information in VA correspondence that included health records and a variety of other sensitive records.²² Your answer contradicted that description, claiming that, “[VIEWS] is used to manage various tasks, documents, and reports within the VA; however, it does not handle medical records, claims,

¹⁵ Tanya Bradsher response to Questions for the Record from Sen. Blackburn, *supra* n. 7.

¹⁶ Tanya Bradsher, response to Questions from Sen. Moran, *supra* n. 5.

¹⁷ Report to the Office of Special Counsel, *supra* n. 8 at p. 17.

¹⁸ *Id.* at p. 14.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tanya Bradsher, response to Questions for the Record from Sen. Blackburn, *supra* n. 7.

²² Tanya Bradsher, response to Questions for the Record from Sen. Blackburn, *supra* n. 7.

benefits, or financial actions.” This response was simply false in the context of the question.²³ As you had to later admit to the Committee, on June 21, these records *are* stored in VIEWS when part of VA correspondence.²⁴ You should have responded candidly to that effect in your first set of answers. I request all internal correspondence related to the preparation of this answer, including the names of VA personnel involved in its drafting, to determine whether the VA intentionally misled the Committee with this response.

The VA’s report also contains clear contradictions, with some parts being candid as to the impact of the VIEWS privacy problem and others trying to water that down. For example, the executive summary of the documents claims that, “[i]t should be emphasized that there is no evidence that VIEWS vulnerabilities discussed in this report resulted in a privacy breach, or has caused harm to Veterans, whistleblowers, or their families.”²⁵ And yet in the body of the report, the investigator clearly contradicts that, noting that, “[t]he whistleblowers believe that the accessibility and sharing of this information [in VIEWS] has resulted in their mistreatment by managers and co-workers, to include retracted detail opportunities, communicated threats, and vandalism to personal property (all reported separately).”²⁶ It’s worth noting that the claim in the executive summary of the OSC’s report mirrored another misleading answer you gave to the Committee, when you were asked whether you were aware, “of any specific incidents of whistleblower retaliation, doxing, identity fraud, or any other negative consequence to individuals that *may* be linked to information in VIEWS being accessed inappropriately.”²⁷ Incredibly, you answered no.²⁸ In follow-up questioning, when this discrepancy was pointed out to you, you claimed that even though you were made aware of concerns about VIEWS after whistleblowers approached your deputy and told her that “personal information for thousands of Veterans and VA employees are today unprotected in VIEWS,” “[you were] not informed at the time or in subsequent conversations about any issues with specific individuals’ information, nor [were you] ever told that any individual’s private or sensitive information had been improperly accessed on VIEWS.”²⁹ Nonetheless, the VA still, two months after Senator Moran brought this discrepancy to your attention, made this same false claim in its report to OSC, contradicting other passages within the same report.³⁰ I need to know why this statement was inserted into the report even after the contrary was brought to the VA’s attention in your Committee proceedings, and who made the decision to include it.

Finally, I want to point out statements in the VA’s misleading memo to SVAC, circulated by Mr. Scheinberg to the Committee on July 12, the day before your Committee vote.³¹ That memo continued the tactic of making misleading statements to deflect from the VA’s failures

²³ *Id.*

²⁴ Tanya Bradsher, response to Questions from Sen. Moran, *supra* n. 5.

²⁵ Report to the Office of Special Counsel, *supra* n. 8 at p. iii.

²⁶ *Id.* at p. 7.

²⁷ Tanya Bradsher, response to Questions for the Record from Sen. Blackburn, *supra* n. 7 (emphasis added).

²⁸ *Id.*

²⁹ Email from Peter Rizzo to Maureen Elias, Subject: VIEWS Concerns (July 13, 2022 at 1:40 PM), on file with staff; Tanya Bradsher, response to Questions from Sen. Moran, *supra* n. 5.

³⁰ *Supra* n. 8.

³¹ *Supra* n. 1.

and downplay and deny allegations VA already told OSC on May 26 it had substantiated from the beginning of its investigation. This VA memo to SVAC members was a response to the Committee's minority staff, which circulated its own memo on July 11 correctly pointing out serious privacy failures in the VIEWS system. The VA's eleventh-hour memo painted the minority's factual report's finding, "that the VIEWS system was rife with security issues," as "incorrect."³² The VA's July 21 report to OSC confirmed that the minority report was right, and the VA memo was wrong when it denied widespread privacy flaws in VIEWS. The VA's memo claimed the allegation that, "thousands of VIEWS files are not being properly treated as sensitive [was] misguided." However, the VA's own report, dated July 21, estimated that, even though it couldn't fully count the number of cases unsecured in VIEWS, "easily" there were "multi-thousands" of records improperly exposed in VIEWS when the whistleblowers came forward in 2022. That same July 21 report said that, "all VIEWS CCM users have access to Veteran names, dates of birth, and personal addresses and phone numbers contained in 3.6 million records" in VIEWS.³³ Clearly, the VA's discredited memo tried—and failed—to hide the ball.

The VA's July 12 memo denied the SVAC minority's claim that searches of VIEWS it conducted turned up unsecured sensitive information. In doing so, the VA memo pointed to updates VA made to VIEWS after the whistleblowers alerted your office in July of 2022, such as updating the VIEWS training course, adding a banner message for existing sensitive cases, and limiting the number of VIEWS office coordinators. These were minor changes geared toward new cases entered in VIEWS. They didn't fix existing cases that were improperly classified. Nor did the VA memo, the VA's report to OSC, or your responses to SVAC under oath in June point to any of these initial updates that would have fixed any of the cases that were incorrectly marked not sensitive. In other words, these slight tweaks didn't at all negate the correct claims the SVAC minority made about sensitive records, including whistleblower information, remaining unsecured in the VIEWS system.³⁴ The VA's July 21 report, even admitted that all of these initial updates were, "ineffective in protecting sensitive personal information from unauthorized access . . ."³⁵ The VA's report noted that, "[i]n June 2023 [the month before the VA's misleading memo to SVAC], an assessment of the effectiveness of [these initial] updates . . . was conducted in the form of key term searches . . . [and] it indicated that these updates were ineffective in protecting sensitive personal information from unauthorized access," and that "[e]ach search returned many cases containing sensitive personal information," including whistleblower information.³⁶ Yet the VA's discredited memo tried to convince SVAC otherwise.

The VA's report to OSC revealed VA didn't make more significant changes to fix unsecured cases in VIEWS until July 2023, which included "mass converting designated case types to 'sensitive', and reconfiguring system business rules for case type and case sensitivity."³⁷

³² *Id.*

³³ Report to the Office of Special Counsel, *supra* n. 8 at p. 8.

³⁴ *Id.* at p. 11.

³⁵ *Id.* at p. 12-13.

³⁶ *Id.*

³⁷ *Id.* at p. 16.

The VA didn't implement these more significant changes until right around the time it circulated its memo to SVAC and the Senate voted on your nomination.³⁸ As already noted, the VA's memo to SVAC was circulated July 12.³⁹ So the VA claimed the Committee minority's findings were false based upon changes it had just implemented or soon would implement. Either of these is a clear attempt to mislead the Committee and make it think the true allegations of longstanding VA mismanagement of the VIEWS system were false. The VA's own report shows that those allegations were true, and the VA's statements to Congress were false and misleading. I request the VA provide the names and titles of all VA officials who instructed Mr. Scheinberg to draft and circulate this memo and who supplied him with the substantive information he presented to the Committee.

I remind you and every VA employee who interacts with Congress of the legal duty to provide true and accurate information to Congress, and the duty not to omit material facts from statements made to Congress in the exercise of its official duties.⁴⁰ I demand an explanation of the issues raised in this letter by January 31, 2024. The VA has shown a pattern of ignoring its responsibility to provide swift and thorough answers to members of Congress who have a constitutional duty to conduct oversight to ensure that our veterans are properly served by the hard-earned dollars of our taxpayers.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

Cc: The Hon. Michael J. Missal
Inspector General
Department of Veterans Affairs

³⁸ *See, e.g., Id.* at p. ii.

³⁹ *Supra* n. 1.

⁴⁰ *See, e.g.,* 18 U.S.C. § 1001.