

United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

January 18, 2024

The Honorable Denis R. McDonough
Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Mr. Secretary,

We write to request information regarding the Department of Veterans Affairs' (VA) investigation and choice of discipline for an employee in VA's Office of General Counsel who allegedly posted an antisemitic video on social media that appears to undermine the credibility of the Department's commitment to care for veterans, their families, caregivers and survivors who represent every race, creed, gender and belief.

As noted in a Committee letter sent to you just last week, harassment of any kind cannot be tolerated. That letter followed allegations that, in the very office responsible for setting the Department's employee conduct and harassment prevention standards, office leaders had been sexually harassing their own subordinates. Now, not even a week later, we learn that the Department decided the suitable punishment for what appears to be the propagating of disdainful antisemitic material on social media is simple counseling.

To justify the lack of disciplinary action, VA officials noted "that past court rulings have established that federal employees have a right to express personal opinions, provided they do so on personal time and without identification as a federal employee." Please identify the rulings that the Department believes are restrictive in this instance. President Obama's Assistant Attorney General and Designated Agency Ethics Official did not come to the same conclusion in a letter dated January 29, 2016, stating that "employees may be disciplined for off-duty conduct if there is a nexus (connection) between the offending conduct and the employee's job-related responsibilities such that the proposed discipline would "promote the efficiency of the Service." See 5 U.S.C. § 7513(a)." ¹ Further, "higher-level employees and those entrusted with sensitive responsibilities, including attorneys and law enforcement officers, are subject to closer scrutiny and greater potential discipline for off-duty misconduct reflecting on honesty and integrity than those employees with less responsibilities."

¹ United States Department of Justice. Memorandum for All Department Employees, Subject: Off-Duty Conduct. January 29, 2016.

If the Department has all the disciplinary authorities it needs, as you have said, we would expect the mass propagation of antisemitic material by a Department attorney to be met with far stronger disciplinary action than counseling. If you believe Congress should address past court rulings to make sure that VA employees can be held to the standards that the American people expect of them, please let us know and we are happy to consider legislation to accomplish that. We introduced one such bill, S. 2158, the *Restore VA Accountability Act*, that we could pass swiftly this Congress with the Department's endorsement.

While making this request for documents and information, we assure you the information provided will be safeguarded appropriately as it is paramount that the Department's existing or future disciplinary actions or investigations related to these matters not be impacted by any inappropriate disclosures.

We request the following documents and information:

1. The results of any investigations conducted related to this incident involving the alleged posting of an antisemitic video on social media by an employee in the VA's Office of General Counsel, including any transcripts and final investigatory report(s);
2. A summary of corrective actions taken since the video became public;
3. A summary of the employee's counseling and its focus, as well as the harassment prevention and accountability training provided to the employee;
4. Prior court rulings VA believes restrict the ability to discipline this employee; and
5. A briefing to staff to review the contents of the documents, provide an update on current status, and answer any questions.

Please provide the requested documents and information to our offices on a rolling basis and do not wait for all materials or information to be assembled before initiating transmission.

Thank you for your prompt attention to this request.

Sincerely,



Jerry Moran
Ranking Member



Joe Manchin III
United States Senator