

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

October 25, 2016

The Honorable Ashton B. Carter
Secretary of Defense
U.S. Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

Dear Mr. Secretary:

(U) Recently released records from the Federal Bureau of Investigation's criminal investigation of former Secretary of State Hillary Clinton show the Department of Defense may have approximately 1,000 work-related emails between General David Petraeus and Secretary Clinton.¹ Those emails are apparently not in the custody of the Department of State.² The emails in questions are relevant to the Committee's ongoing investigation into the State Department's compliance with the Federal Records Act and other laws, policies, and procedures related to the handling of classified national security information. Please provide copies of those communications.

(U) The records released by the FBI on October 17, 2016, include a summary of the FBI's interview of an employee in the State Department's Office of Information Programs and Services (IPS).³ The IPS employee was one of the officials responsible for processing 12 Bankers Boxes of federal records produced by Secretary Clinton, after Secretary Clinton apparently refused to provide the Department with electronic copies of the emails.⁴ During her interview, this employee informed the FBI that your office contacted her around August 10, 2015, to tell her that U.S. Central Command (CENTCOM) records showed approximately 1,000 emails between Secretary Clinton and General Petraeus.⁵ Most of those 1,000 emails, however, were not included among the emails Secretary Clinton turned over to the State Department.⁶ The

¹ FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [State Department employee] on Aug. 17, 2015*, at 5, in HILLARY R. CLINTON PART 03 OF 04 at 40-44 (2016), available at <https://vault.fbi.gov/hillary-r.-clinton/hillary-r.-clinton-part-03-of-04/>.

² *Id.*

³ *Id.*

⁴ *Id.*; see FED. BUREAU OF INVESTIGATION, *FD-302, Interview of Steve Linick on Aug. 4, 2015*, at 1, in HILLARY R. CLINTON PART 03 OF 04 at 62-64, *supra* note 1; FED. BUREAU OF INVESTIGATION, *FD-302, Interview of Patrick Kennedy on Dec. 21, 2015*, at 5, in HILLARY R. CLINTON PART 03 OF 04 at 56-59, *supra* note 1.

⁵ FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [State Department employee] on Aug. 17, 2015*, at 5, *supra* note 1.

⁶ *Id.*

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IPS employee told investigators that only a few of the 30,000 emails Secretary Clinton turned over were from or related to General Petraeus.⁷

(U) As the IPS employee noted, the circumstances of Secretary Clinton's production of emails to the State Department were also unusual. For one, rather than simply providing an electronic copy of the emails on a thumb drive (Secretary Clinton's lawyers had at least three thumb drives with full copies of the emails, as well as seven laptops with copies of them⁸), Secretary Clinton's attorneys chose to print all 30,000 emails and send them in fourteen Bankers Boxes.⁹ This tactic significantly delayed FOIA responses and increased the workload for the State Department,¹⁰ as well as for Secretary Clinton's attorneys. As the Acting Director of IPS, John Hackett, explained,

Each page of the 55,000 must be individually hand-processed in order to ensure that all information is being captured in the scanning process. The scanning process itself involves five steps that are time-consuming and labor-intensive. . . . This process was made even more complicated by the fact that some, but not all, of the paper records that the Department received were double-sided. It took the Department five weeks to perform the scanning process, which was completed recently in May. There will be further work required to load these into a searchable database, which will be completed by mid-June.¹¹

There was no apparent reason, for a printed production rather than electronic production, unless the delay itself was the objective. Additionally, Secretary Clinton's attorneys provided only 12 of the 14 boxes of emails to the State Department, and the email printouts were "pre-arranged differently than one would expect if the documents were simply printed out and then stacked into the boxes."¹²

(U) Secretary Clinton's apparent failure to produce these records to the Department of State is troubling, especially in light of the fact that her representatives deleted the remaining emails (approximately 30,000 of them) and used Bleachbit to prevent their recovery.¹³ If federal

⁷ *Id.*

⁸ *E.g.*, FED. BUREAU OF INVESTIGATION, *FD-302, Interview of Katherine M. Turner on Aug. 6, 2015*, at 1, in HILLARY R. CLINTON PART 04 OF 04 at 59–60 (2016), available at <https://vault.fbi.gov/hillary-r.-clinton/hillary-r.-clinton-part-04-of-04/>.

⁹ FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [State Department employee] on Aug. 17, 2015*, at 1, *supra* note 1.

¹⁰ Declaration of John F. Hackett at 5–7, *Leopold v. U.S. Department of State*, No. 1:15-cv-000123-RC (D.D.C. May 15, 2015), ECF No. 12-1.

¹¹ *Id.* at 6–7.

¹² FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [State Department employee] on Aug. 17, 2015*, at 1, *supra* note 1.

¹³ *E.g.*, FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [Platte River Networks employee] on Feb. 18, 2016*, at 6, in HILLARY R. CLINTON PART 03 OF 04 at 14–20, *supra* note 1; FED. BUREAU OF INVESTIGATION, *FD-302, Interview of [Platte River Networks employee] on May 3, 2016*, at 4, 6, in HILLARY R. CLINTON PART 03 OF 04 at 21–27, *supra* note 1.

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records were destroyed at Secretary Clinton's direction or the production was intentionally delayed to avoid transparency, it would raise numerous questions, including: why the emails were not produced, why they were deleted and wiped, what was in the emails, whether the non-compliance with federal records laws and subpoenas was intentional, and what keywords Secretary Clinton's attorneys used to identify which records and evidence should be produced versus destroyed.

(U//~~FOUO~~) To assist the Committee's investigation of this matter, please provide the following documents as soon as possible, but no later than 5:00 p.m. on November 1, 2016:

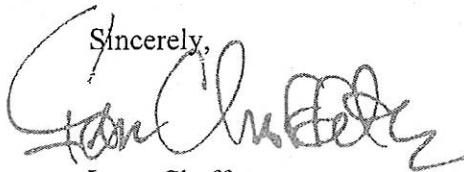
All communications in the possession, custody, or control, of the Department of Defense to or from Secretary Clinton from December 1, 2008, to February 1, 2013, including, but not limited to, any emails to or from hdr22@clintonemail.com; hrod17@clintonemail.com; hr15@att.blackberry.net; hr15@mycingular.blackberry.net; [REDACTED] sshrc@state.gov; or smsgs@state.gov.

(U) An attachment to this letter defines relevant terms and provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

(U) The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

(U) Please have your staff contact Liam McKenna of my staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.