

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Charles E. Grassley (#1)
Senate Committee on the Judiciary
May 6, 2015**

Question:

A 2012 State Department Inspector General report says that leadership and management practices “contribute to problematic morale and poor communication” across the Office of Information Programs and Services (IPS), which handles one of the largest FOIA workloads in the federal government.

What specific steps have been taken since the 2012 IG report to improve management controls to ensure that the State Department can efficiently and effectively carry out its FOIA and records management duties?

Answer:

Since the Office of Inspector General issued its 2012 report, the Department has taken several actions to improve the Department’s FOIA and records management practices, which are particularly noteworthy given the challenges posed by the substantial increase in the number of FOIA requests and other record management responsibilities since 2012.

The Department increased its external communications by launching foia.state.gov. This website provides better guidance to the public to make it easier to submit FOIA requests. The Department has also overhauled our online FOIA reading room, which has almost 100,000 documents online.

The Department has improved internal communication and training. For example, we have increased the number of meetings with managers and staff and launched an internal tracking database to keep better track of FOIA projects. We have also improved our training to Department bureaus, which are responsible in the first instance for conducting FOIA searches, and internally in the Bureau of Administration, which handles the processing of FOIA requests. We have assigned more resources to the FOIA program, and have improved our internal software.

Most recently, in March 2015, the Secretary asked the OIG to review FOIA and records management practices. This review is on going. In August, the Secretary appointed a Transparency Coordinator who will also be involved in the improvement of these programs.

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Charles E. Grassley (#2)
Senate Committee on the Judiciary
May 6, 2015**

Question:

I understand that in Fiscal Year 2014, the State Department experienced a 60% increase in FOIA lawsuits, which according to State Department's own Chief FOIA Officer Report, "necessitated the reallocation of resources from processing FOIA requests to handling FOIA litigation." Such a reallocation of resources and manpower, I imagine, has consequences for the efficient processing of pending FOIA requests.

- A. Should requesters have to shoulder that consequence? Doesn't the reallocation of State's resources to FOIA litigation only set itself up for additional litigation based on even more delays?
- B. What specifically are you doing to ensure that all the necessary functions of FOIA processing are still effectively and efficiently carried out under these circumstances?

Answer:

The Department is committed to transparency and to responding to FOIA requests as quickly as possible. Given the increased demand placed on the FOIA program in the Department, with a 300% increase in requests since 2008 (from 6,000 requests in 2008 to 20,000 requests in 2014), and the increased workload in FOIA litigation that has ensued, we are looking at ways to both process FOIA requests and manage FOIA litigation in the most efficient ways possible given the resources available to the program. The

combination of an increased number of FOIA requests and a growing number of FOIA litigation cases requires the Department to work on immediate plans to address the increased demands in both areas. We are also developing long term plans for the overall program so that we can put in place sustainable solutions that will allow us to better answer requests for information from the public.

Efforts are underway to better leverage technology to process FOIA requests, as well as to release documents on the Department's FOIA website to make them publicly available after they are requested.

Additionally, we are reviewing our FOIA practices to identify where process changes could be made that will allow the Department to respond to the public in a timely manner while also making sure that information gathered in response to FOIA requests is done so in the most thorough way possible and that the subsequent review of the information is done in a timely manner for release to the public.

In March of this year, the Secretary asked the Department's Inspector General to review FOIA and records management practices. In August, the Secretary appointed a Transparency Coordinator who will also be involved in the improvement of these programs, as well as overall transparency in the Department. In September, the Department reached out to all employees

and retirees asking for individuals with current Top Secret security clearances and substantive experience to serve in the FOIA office for the next 9 to 12 months. As of mid-October, more than 20 candidates have been selected, and we continue working to bring more staff on board.

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Charles E. Grassley (#3)
Senate Committee on the Judiciary
May 6, 2015**

Question:

In June of 2013 and March of 2015 I sent a letter to the State Department asking a number of questions. One of the major questions I asked related to the relationship between Ms. Huma Abedin and her role as a Senior Advisor to Secretary Clinton while simultaneously working in the private sector for a political intelligence and consulting firm, Teneo. Notably, Ms. Abedin was given a rare classification as a Special Government Employee (SGE) which allowed her to work part time from New York while still working for Secretary Clinton. Normally, SGE designations are used for individuals moving from the private sector to government because of a special skillset that person may have. However, in Ms. Abedin's case, she neither came from the private sector nor came from another government position. She converted from a full-time employee to become an SGE, with seemingly little difference in her job description or responsibilities. This arrangement raises serious ethical issues. Accordingly, I requested communications between Ms. Abedin's State Department email account and Teneo. When Secretary Clinton admitted that she housed a private email account on a personal server in her residence and as news reports surfaced that Ms. Abedin also emailed from a private email account to that server, ethical and transparency issues became even more relevant.¹ In addition, the State Department's recordation policies as well as its ability to adequately and accurately respond to Congressional inquiries and FOIA requests is called into serious question. Accordingly, I now ask the following:

- a. Did Ms. Abedin have an email account on Secretary Clinton's private email server? If so, when were her official emails sent to the Department and who sent them?

¹ See Stephen Dinan, "Hillary Clinton's aide Huma Abedin's emails now face disclosure lawsuit," *Washington Times* (May 5, 2015) <http://www.washingtontimes.com/news/2015/may/5/huma-abedins-emails-face-disclosure-suit/>; see also Daniel Halper, "Hillary's Top Two Aides Used Personal Email at State Department," *The Weekly Standard* (Mar. 11, 2015) http://www.weeklystandard.com/blogs/hillarys-top-two-aides-used-personal-email-state-department_883063.html.

- b. Did Ms. Abedin use a private email account outside of Secretary Clinton's private email server to communicate with Secretary Clinton? If so, has Ms. Abedin turned over those official emails to the State Department?
- c. If Ms. Abedin had an account on Secretary Clinton's server and/or emailed Secretary Clinton from a private email account outside of Secretary Clinton's server, were any of Ms. Abedin's emails deleted from that server? If so, who deleted those emails?
- d. Did Mr. Philippe Reines and/or Ms. Cheryl Mills have an email account on Secretary Clinton's private email server? If so, when were their official emails sent to the Department and who sent them?
- e. Did Mr. Reines and/or Ms. Mills use a private email account outside of Secretary Clinton's private email server to communicate with Secretary Clinton? If so, has Mr. Reines and/or Ms. Mills turned over official emails to the State Department?
- f. If Mr. Reines and/or Ms. Mills had an account on Secretary Clinton's server and/or emailed Secretary Clinton from a private email account outside of Secretary Clinton's server, were any of their emails deleted from that server? If so, who deleted those emails?
- g. Will the State Department search the emails from Secretary Clinton's private server for documents responsive to my June 2013 and March 2015 inquiry?
- h. Regarding my June 2013 and March 2015 letters, when can this Committee expect to receive full and complete responses?

Huma Abedin

On March 11, 2015, the Department wrote to Ms. Abedin to “ask that should you be aware or become aware in the future of a federal record in your possession, such as an email sent or received on a personal email account while serving in your official capacity at the Department, that such record be made available to the Department.” We requested that such record be “provided to the Department at your earliest convenience if there is any reason to believe that it may not otherwise be preserved in the Department’s recordkeeping system.” On June 29, 2015, Ms. Karen Dunn and Mr. Miguel Rodriguez, representatives for Ms. Abedin, replied to the March 11 letter, which they noted was not received by Ms. Abedin until May 19. In the June 29 reply, Ms. Dunn and Mr. Rodriguez noted that, “On the same day that we received the department’s letter requesting the assistance of our client, we received a request directed to Ms. Abedin from the House Select Committee on Benghazi (the Benghazi Committee) for ‘documents that reflect any communication between Huma Abedin and any other person that refers to, relates to, or concerns the Attacks, any statement about the Attacks, or any response to the Attacks for the period from September 11, 2012 through and including September 30, 2012.’” This request was superseded on June 1 by a document request from the Benghazi Committee for “any and all

documents and communications sent or received by [Ms. Abedin] from any and all non-State Department email address(es) she utilized, referring or relating to a) Libya (including but not limited to Benghazi and Tripoli) and/or b) weapons located or found in, imported or brought into, and/or exported or removed from Libya.” Ms. Dunn and Mr. Rodriguez noted that they were “on track to provide the Department documents responsive to the Select Committee’s June 1, 2015 letter within the next several weeks and hope to work closely with the Department on a timetable for providing any other potential federal records in Ms. Abedin’s possession.”

On July 9, Ms. Abedin’s representatives provided to the Department documents identified by Ms. Abedin as responsive or potentially responsive to the Benghazi Committee’s June 1 request. On July 31, the Department wrote to Ms. Dunn and Mr. Rodriguez to request “that you and your client now take steps to return all copies of potential federal records in your possession to the Department as soon as possible.” On August 7, Ms. Dunn and Mr. Rodriguez provided additional documents from Ms. Abedin and noted that they expected to complete the production of Ms. Abedin’s potentially responsive documents by August 28. On September 1, they provided to the Department Ms. Abedin’s documents that were “responsive or potentially responsive to your request.”

Cheryl Mills and Philippe Reines

On March 11, 2015, the Department wrote separately to both Mr. Philippe Reines and Ms. Cheryl Mills to “ask that should you be aware or become aware in the future of a federal record in your possession, such as an email sent or received on a personal email account while serving in your official capacity at the Department, that such record be made available to the Department.” We requested that such record be “provided to the Department at your earliest convenience if there is any reason to believe that it may not otherwise be preserved in the Department’s recordskeeping system.” On March 16, Beth Wilkinson, the representative of Ms. Mills, acknowledged receipt of the March 11 letter on behalf of her client, committed to provide any such potential federal records, and asked for an additional week to confer with Ms. Mills. On March 17, the Department acknowledged the March 16 letter, noted that Ms. Wilkinson “requested an extension to March 25, 2015”, and granted that request. On March 24, Ms. Wilkinson wrote to the Department, noting “we believe that Ms. Mills may have documents responsive to your letter, and will work with her to produce any such documents to you as soon as possible.”

On June 2, the Department wrote to Ms. Wilkinson regarding the March 11 letter to Ms. Mills to request that “you expedite production to the Department of any such document that is potentially responsive to the subpoena from the Select Committee on Benghazi that was attached to [the Department’s] letter. The Department is committed to producing responsive documents to the Committee as quickly as possible.” On June 25, Ms. Mills produced documents and committed to continue to produce additional documents. On July 31, the Department wrote to Ms. Wilkinson to request “that you and your client (Ms. Mills) now take steps to return all copies of potential federal records in your possession to the Department as soon as possible.” On August 6, Ms. Wilkinson replied and advised that she “expect(ed) to produce additional documents for the Department’s review in an electronic format on August 10, 2015.” In a separate letter of August 6, Ms. Wilkinson noted, “Ms. Mills did not have an account on Secretary Clinton’s email server.” On August 10, Ms. Wilkinson provided documents from Ms. Mills’ personal email account in response to the March 11 request from the Department. On August 12, Ms. Wilkinson produced another set of documents and noted, “With the delivery of these materials today, we have produced all potential federal records identified in Ms. Mills’ possession.

Should any additional potential federal records be identified in the future, we will promptly notify the Department of State and provide them.”

On March 16, Beth Wilkinson, Mr. Reines’s representative, acknowledged receipt of the March 11 letter from the Department. On June 2, the Department wrote to Ms. Wilkinson regarding the March 11 letter to Mr. Reines to request that “you expedite production to the Department of any such document that is potentially responsive to the subpoena from the Select Committee on Benghazi that was attached to my letter. The Department is committed to producing responsive documents to the Committee as quickly as possible.” On July 31, the Department wrote to Ms. Wilkinson to request “that you and your client (Mr. Reines) now take steps to return all copies of potential federal records in your possession to the Department as soon as possible.” On July 28, Ms. Wilkinson provided documents from Mr. Reines and in an August 6 letter stated that “(o)n July 28, 2015, Mr. Reines provided a hard copy of all potential federal records in his possession from his tenure at the Department of State from 2009 through 2013 to the Department.” The August 6 letter enclosed the July 28 documents in electronic format.

Additionally, on August 7, 2015, the Court in *Judicial Watch v. Department of State* (13-01363) ordered the Department “to request that Mrs. Hillary Clinton, Ms. Huma Abedin, and Ms. Cheryl Mills, i) not delete any federal documents, electronic or otherwise, in their possession or control, and ii) provide appropriate assurances to the Government that the above-named individuals will not delete any such documents.” Accordingly, on August 10, the Department sent separate letters to the representatives of former Secretary Clinton, Ms. Abedin, and Ms. Mills in compliance with the Court’s order. On August 12, each of the respective representatives sent replies.

The Department is not aware that Mr. Reines or Ms. Mills had an email account on Secretary Clinton’s server. On September 22, 2015, Ms. Beth Wilkinson, representative of Ms. Mills and Mr. Reines, wrote to the Department and stated, “We have observed confusion in the media and other areas surrounding whether our clients used email accounts on the @clintonemail.com server. As stated in our August 6, 2015 letter, Cheryl Mills did not have an account on Secretary Clinton’s email server. Philippe Reines also never had accounts on that server.”

Regarding searches of and deletions from former Secretary Clinton's server, on September 14, 2015, the Department wrote to the Federal Bureau of Investigation, noting the following:

We understand that the Federal Bureau of Investigation (FBI) has obtained the private server used by former Secretary Clinton to operate her personal email account along with one or more related thumb drives. While we do not want to interfere with the FBI's review, the Department of State has an interest in preserving its federal records and, therefore, requests the FBI's assistance. ... (W)e request from the FBI an electronic copy of the approximately 55,000 pages identified as potential federal records and produced on behalf of former Secretary Clinton to the Department of State on December 5, 2014. ... (T)o the extent the FBI recovers any potential federal records that may have existed on the server at various points in time in the past, we request that you apprise the Department insofar as such records correspond with Secretary Clinton's tenure at the Department of State."

The Department has worked closely with Committee staff with respect to its various requests for documents and will continue to do so.

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Charles E. Grassley (#4a &4b)
Senate Committee on the Judiciary
May 6, 2015**

Questions:

According to Secretary Clinton, she deleted approximately 30,000 emails from her private server and submitted another 30,000 to the State Department. Secretary Clinton has stated that she was the sole arbiter in determining whether emails were of a personal nature and ought to be deleted and whether emails were of a business nature and ought to be saved. Secretary Clinton's email recordation system calls into question the ability of the State Department to properly review documents for FOIA compliance as well as adequately respond to legitimate FOIA requests. Moreover, Secretary Clinton's email recordation calls into question the State Department's ability to respond to Congressional inquiries.

- a. Generally speaking, are you aware of any employee besides Secretary Clinton who built a personal server in his/her personal residence and used a personal email account on such a server?
- b. When a State Department employee does not use an official email account for work related matters, what is the disciplinary protocol for failing to abide by State Department policy?

Answers:

At this time, the Department is not aware of any other employee who built a personal server in his or her personal residence and used a personal email account on such a server.

Managing records properly is everyone's job. Every employee has two basic responsibilities in this regard:

1. To create records that the employee and others need to do business. It is very important to record decisions and actions taken.
2. To take care of the records so that they can be found when needed. This means setting up good records management systems.

As with many of the Department's policies, an employee's failure to comply could result in a variety of responses, depending on the circumstances. As a first step, poor record-keeping would be the subject of counseling about how to remedy the situation.

More serious offenses involving records could be subject to more serious discipline. In its Foreign Affairs Manual (FAM), the Department has set out its policies for appropriate email use and records management. The FAM also includes a list of offenses for which an employee can face discipline, again, depending on the circumstances.

These offenses could include failure to follow proper instructions and conduct demonstrating untrustworthiness, unreliability, or use of poor judgment. The Department takes security of its classified information very seriously, and improper handling of classified or administratively-controlled information can, if the circumstances warrant, result in disciplinary action or adverse action to an employee's security clearance.

Discipline is the responsibility of the employee's supervisor, who coordinates with the Bureau of Human Resources. Penalties can fall within the range of a Letter of Reprimand to suspension to removal. In cases where deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an employee's reliability or ability to safeguard such information, the Bureau of Diplomatic Security has the authority to adjudicate appropriate security clearance actions.

**Questions for the Record Submitted by
Senator Charles Grassley (#4c)
Assistant Secretary for Administration Joyce Barr
Senate Judiciary Committee
May 6, 2015**

Question:

- c. Has the State Department received any access to Secretary Clinton's personal server? If so, please explain the degree of access. If not, why not?

Answer:

We do not have access to Secretary Clinton's server; we understand that it is in the possession of the Federal Bureau of Investigation.

**Questions for the Record Submitted by
Senator Charles Grassley (#4d)
Assistant Secretary for Administration Joyce Barr
Senate Judiciary Committee
May 6, 2015**

Question:

- d. Of the emails Secretary Clinton has turned over to the State Department, can you unequivocally state that none of them are classified?

Answer:

Some of former Secretary Clinton's emails that the Department has posted online have had portions redacted because of classification. During the FOIA review process, it was deemed that some of the information in certain emails should be classified prior to public release. It is not uncommon that something that is sent today on an unclassified network could in later years be deemed to be classified pursuant to a review under FOIA.

**Questions for the Record Submitted by
Senator Charles Grassley (#4e & 4f)
Assistant Secretary for Administration Joyce Barr
Senate Judiciary Committee
May 6, 2015**

Question:

- e. In light of Secretary Clinton's email practices, is the State Department able to comply with all FOIA requests on matters that touch and concern Secretary Clinton, Ms. Abedin, and/or other high level State Department officials who sent emails through Secretary Clinton's private server? Please explain.

- f. What effect has Secretary Clinton's email recordation practices had on State Department FOIA compliance? What effect has Secretary Clinton's email recordation practices had on State Department responses to Congressional inquiries?

Answer:

As a general matter, the Department acknowledges that we are struggling to keep up with a large increase in FOIA requests. Since 2008, our caseload has increased over 300 percent. In Fiscal Year 2008, the State Department received fewer than 6,000 new FOIA requests; in Fiscal Year 2014, we received nearly 20,000.

Furthermore, many of these cases are increasingly complex. The State Department is the public's first, and often the only, stop for

information relating to national security issues. Other national security agencies are partially, if not completely, exempt from FOIA requests. As a result, requesters often come only to the Department to request information on any and all national security issues, including diplomacy, terrorism, wars, foreign government relations, and security. These complex subject matters require multiple searches throughout many of our 275 Missions around the globe, often involving the review of classified or highly sensitive materials, as well as coordination with other federal agencies.

In addition, the Department receives steady requests for information from Congress, which adds to the overall workload.

FOIA requests for all 55,000 pages of former Secretary Clinton's emails at one time has put added stress onto an already overloaded process. However, we are doing everything we can to meet the court ordered deadlines to produce a certain percentage of these emails by the end of each month until January 2016. We have produced emails each month from May to September of 2015, releasing, as of September 30, a total of 19,570 of the 52,455 pages of records, more than 37 percent of the total. In addition, we have received documents from some of former Secretary Clinton's aides,

which we are also processing for release in response to FOIA requests, as relevant.

In order to process the Clinton emails, as well as keep up with regular FOIA requests, internally we have diverted some Department manpower to assist the FOIA Office. To date over 20 individual volunteers have been selected or detailed to assignments in the FOIA office to help address backlog and new incoming requests, and we continue work to add additional staff.

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Thom Tillis (#1)
Senate Committee on the Judiciary
May 6, 2015**

In a letter to the State Department Inspector General, Secretary of State John Kerry admitted the Department faced challenges with regard to processing Freedom of Information Act (FOIA) requests and that Department personnel used non-government systems to conduct official business. A number of observers have stated that the State Department consistently performs poorly when responding to FOIA requests and that it currently maintains a significant backlog of requests.

Since Secretary Kerry has taken over as Secretary of State, what actions has the Department taken to triage new and backlogged FOIA requests?
Specifically:

- i. What are the Department's metrics for setting acceptable internal timetables for fulfilling FOIA requests?
- ii. Do you have an improvement plan to reach these metrics?
- iii. What milestone will the Department attempt to reach next? Put differently, if the plan is incremental, how does the Department plan on tracking the progress?
- iv. Will the Department publicly commit to meeting this milestone, and if the milestone is not met, will the Department return to the Senate Judiciary Committee to explain why?

Answer:

The Department received over 19,000 requests in Fiscal Year 2014. By May 2015, the backlog of FOIA requests was 18,000. With so many

requests of all types already pending in the backlog, along with new requests being submitted each day by requesters, the Department has a timetable in place for different types of requests to ensure that they are responded to as soon as possible, while taking into account delays that result due to unusual circumstances. While the goal of metrics in place is to respond within the 20-day statutory time period and to achieve 10% backlog reduction each year, the reality is that there are many roadblocks in place to achieving this goal.

In March, Secretary Kerry asked the Department's Inspector General to review records and FOIA practices at the Department. Additionally, the Secretary appointed a Transparency Coordinator who will be looking into these topics and more with regard to records and FOIA at the Department. In September, the Department reached out to all employees and retirees asking for individuals with current Top Secret security clearances and substantive experience to serve in the FOIA office for the next 9 to 12 months. As of mid-October, more than 20 candidates have been selected, and we continue working to bring more staff on board.

Each FOIA request is reviewed on an individual basis, and for the most part, each request is unique.

The FOIA processing timetable is defined by the following metrics:

- Respond to requests on a first-in, first-out basis
- Prioritize cases within queues, such as expedited, simple, and complex requests. This can best be achieved by constantly evaluating the status of these cases and monitoring their progress.
- Under normal circumstances, the Department acknowledges a new FOIA request within 5 – 7 days. There may be some back and forth between the Department and the FOIA requester before a perfected request may go on to processing. For example, if the request is seeking voluminous materials or the request is unclear to those searching for documents, the FOIA office will contact the requester to discuss the scope and narrowing the request, if possible, to reduce the time it takes to process the request. A decision to expedite and/or provide a fee waiver is also completed within this timeframe.
- Within 8 - 10 days, a search tasker is sent out to bureaus or a search is conducted within the State Archiving System for responsive documents. This part of the process is handled by the FOIA case processing units. Due to volume of requests received and staffing challenges, not all taskers are sent within the required timeframe.
- The search tasker that is sent to bureaus provides a due date for responding to the tasker. If the bureau does not respond, the FOIA office reaches out to the bureau to remind them.
- Once documents from the relevant bureau(s) are provided to the FOIA office for review, these documents must be scanned and indexed into the electronic case processing system. Depending on the volume of documents, this step may take 6 – 9 months to complete.
- Once indexed, a FOIA reviewer reviews the documents and often must coordinate the review with other bureaus within the Department and at other agencies. Sometimes, it also becomes evident that an additional office may need to be tasked after the review is conducted. If that happens, the search tasker is sent out and the above steps are taken for the new search.

- After the review is completed, a response is sent out to the requester, which may be an interim release, if the production is rolling and more productions will be forthcoming, or a final release.

The Department is always evaluating the process to improve response time and provide a quality search and review of records. The Department will be working with the Secretary's new Transparency Coordinator to develop reachable metrics in order to measure progress in FOIA.

The Department will be working with the Secretary's new Transparency Coordinator to develop reachable metrics in order to measure progress in FOIA.

The Department FOIA Office will be working with the Secretary's Transparency Coordinator to develop reachable milestones. The Department is willing to discuss with you these milestones once they have been established.

**Questions for the Record Submitted to
Assistant Secretary Joyce Barr by
Senator Thom Tillis (#2)
Senate Committee on the Judiciary
May 6, 2015**

At the hearing, there was significant discussion concerning former Secretary Clinton's use of a private server to conduct official government business. Uncertainty remains regarding whether these communications can ever be retrieved.

Since Secretary Kerry has taken over as Secretary of State, have there been any changes in policy regarding the practice of Department personnel using private servers to conduct official government business?

- i. If yes, please specifically explain what these policy changes are and what steps were taken to ensure employees preserve and archive communications?
- ii. If not, does the State Department intend to implement a change in its policy to prevent employees from using private servers or implement new policies to ensure employees effectively store and archive communications made through private servers?
- iii. Please describe the process the Department has employed to investigate an allegation that an employee used private servers or hardware to conduct official government business.
- iv. If an employee is found to have intentionally used private servers or hardware to circumvent federal law, particularly laws related to the retention and review of communications regarding official government business, what disciplinary action would the State Department impose on the employee?
- v. To your knowledge, has there ever been an instance in which criminal charges were pursued against a State Department employee as a result of that employee's use of a private (as opposed to Department-owned) server, personal computer, or any other unsecured device?

Answer:

The Department of State is working to meet the goals of the President's Managing Government Records Directive. In 2014 and 2015, the Department issued guidance to all Department employees, including Senior Officials, reminding them of their overall records management responsibilities, including email, and issued a directive to preserve electronically the email of Senior Officials upon their departure from the Department. Consistent with the November 2014 Presidential and Federal Records Act Amendments, the Department also issued a Department Notice that reiterates and clarifies records management responsibilities of all employees, noting that in the rare instances in which an employee uses personal email (e.g., traveling overseas where electronic connection to official government systems are poor), the employee must copy his or her state.gov account, or forward the message to his or her government account within 20 days. The Department is also reviewing email management options for the Department through an Electronic Records Management Working Group established by the Under Secretary for Management.

On March 25, Secretary Kerry sent a letter to our Inspector General requesting that the Inspector General undertake a review of the Department's records management efforts to date and to recommend

concrete ways the Department can improve. We look forward to considering any recommendations made by the Office of Inspector General in this regard.

On March 25, Secretary Kerry sent a letter to our Inspector General, requesting that the Inspector General undertake a review of the Department's records management efforts to date and to recommend concrete ways the Department can improve. We continue to work with the IG and await the results of this review.

Managing records properly is everyone's job. Every employee has two basic responsibilities in this regard:

1. To create records that the employee and others need to do business. It is very important to record decisions and actions taken.
2. To take care of the records so that they can be found when needed. This means setting up good records management systems.

As with many of the Department's policies, an employee's failure to comply could result in a variety of responses, depending on the circumstances. As a first step, poor record-keeping would be the subject of counseling about how to remedy the situation.

More serious offenses involving records could be subject to more serious discipline. In its Foreign Affairs Manual (FAM), the Department has set out its policies for appropriate email use and records management. The

FAM also includes a list of offenses for which an employee can face discipline, again, depending on the circumstances.

These offenses could include failure to follow proper instructions and conduct demonstrating untrustworthiness, unreliability, or use of poor judgment. The Department takes security of its classified information very seriously, and improper handling of classified or administratively-controlled information can, if the circumstances warrant, result in disciplinary action or adverse action to an employee's security clearance.

Discipline is the responsibility of the employee's supervisor, who coordinates with the Bureau of Human Resources. Penalties can fall within the range of a Letter of Reprimand to suspension to removal. In cases where deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an employee's reliability or ability to safeguard such information, the Bureau of Diplomatic Security has the authority to adjudicate appropriate security clearance actions.

To our knowledge, the Department has not prosecuted an employee for use of a private server.

**Questions for the Record Submitted to
Assistant Secretary of State Joyce Barr by
Senator Patrick Leahy (#1)
Senate Committee on the Judiciary
May 6, 2015**

Question:

Does the State Department comply with the Obama Administration's mandate that agencies approach FOIA with a Presumption of Openness, and err on the side of disclosure when considering FOIA requests? If so, why does the State Department deny nearly half of the requests it receives?

Answer:

The Department takes its responsibility under the Freedom of Information Act (FOIA) very seriously and complies with all Obama Administration guidance regarding transparency, including the 2009 Open Government Directive, available at <https://www.whitehouse.gov/open/documents/open-government-directive>, and Attorney General Holder's 2009 memorandum regarding FOIA, available at <http://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf> . The Department has well-established policies regarding disclosing as much information as possible without compromising national security and/or the visa and permit processes.

Given the Department's mission, a large majority of FOIA withholdings are made under FOIA Exemption 3 pursuant to the Immigration and Nationality Act (INA) because they request certain visa-related records. Section 222(f) of the INA provides that "(t)he records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States" with certain limited exceptions.

In addition, the nature of the Department's mission involves issues that implicate national security; therefore, certain information maintained by the Department is classified to protect national security. For this reason, the Department has limited discretion in releasing this information and asserts Exemption 1 to protect properly classified information.

Finally, requestors often erroneously submit FOIA requests to the Department. For example, the Department of State receives requests related to one of the 50 states. We also receive requests that pertain to other agencies.

**Questions for the Record Submitted to
Assistant Secretary of State Joyce Barr by
Senator Patrick Leahy (#2)
Senate Committee on the Judiciary
May 6, 2015**

Question:

Has the State Department requested an increase in its budget to help it comply with its obligations under FOIA? If not, what does the Department of State need in order improve its FOIA response time and reduce the backlog of requests?

Answer:

The Department is evaluating a budget request that will help meet obligations under FOIA.

In FY 2015, the Department reprogrammed funding at the end of the fiscal year to provide additional resources for staffing, reviewers, and an improved electronic system to process requests electronically, not in paper format.

Additionally, the FOIA Program is also looking at other ways that it can leverage existing resources within the Department to receive timely responses from bureaus and offices so that it can better respond to requests in a faster manner. Earlier this year, the Secretary asked the Department's Office of Inspector General to help "ensur(e) that the Department is doing everything it can to improve" records management, including how to

improve its tools and methods for complying with FOIA requests. Also, the Secretary has recently appointed a Transparency Coordinator who will be looking into these matters.

**Questions for the Record Submitted to
Assistant Secretary of State Joyce A. Barr by
Senator Patrick Leahy (#3)
Senate Committee on the Judiciary
May 6, 2015**

Question:

In a FOIA lawsuit seeking release of the Senate Intelligence Committee's full report on the CIA's torture program, Justice Department and State Department officials submitted declarations on January 21, 2015, stating that their copies of the report remain locked away, unopened. I was appalled to learn that both Departments, which received the full report in December, had not even opened it.

Did State Department officials decide not to open the full report in an attempt to bolster the government's position in the FOIA lawsuit, or otherwise avoid federal records laws?

Answer:

As you are aware, the status of the Senate Select Intelligence Committee's report regarding the CIA's former detention and interrogation program delivered to the Department has been the subject of ongoing litigation in *ACLU v. CIA*, Civil Action No. 13-1870 (D.D.C.). In a filing with the Court, the government "assure[d] the Court that it will preserve the status quo either until the issue of whether the Full Report is a congressional document or an agency record is resolved, or until it obtains leave of court to alter the status quo." *See Defendants' Response to Plaintiffs' Emergency Motion For An Order Protecting This Court's Jurisdiction*, filed February 6,

2015. The ACLU appealed the district court's decision that the report in question was not an agency record subject to FOIA. As such, the case is not fully resolved and the Department must maintain the status quo with regard to the treatment of the final report.

**Questions for the Record Submitted to
Assistant Secretary Joyce A. Barr by
Senator Vitter
Senate Committee on the Judiciary
May 6, 2015**

Question 4:

According to the Testimony of Mr. Blanton, the State Department has a \$1 Billion IT budget. How do you justify the speed with which your agency processes FOIA requests when this budget indicates plentiful resources to address the problem?

Answer:

The Department's \$1.6 billion IT budget covers a wide variety of requirements, including the periodic technological refresh of computers and server equipment at all of our domestic facilities and overseas missions; personal communication devices such as cell-phones and Blackberries; the operations, maintenance and security of the Department's intranet platform and electronic outreach efforts; and the development systems designed to standardize and improve management processes, ranging from logistics and human resources to passport and visa processing.

Personnel costs are the largest share of the FOIA Office's operating budget, and are funded out of Diplomatic and Consular Programs. Though the Department's FOIA Office has identified technological solutions that could aid in their work, the increase in the Department's FOIA backlog is

more complicated than a simple lack of IT resources. In recent years, the FOIA office has seen a significant workload increase (nearly 20,000 requests in 2014, growing over 300 percent since 2008) as well as an increase in litigation over open cases, while funding constraints have meant that the office's resources haven't kept pace with this increasing demand. Once a case enters litigation, reaching resolution is far more labor intensive due to additional requirements. Additionally, the Department deals with many complex FOIA requests requiring coordination across bureaus and posts overseas and must thoroughly review responses to prevent the release of sensitive and potentially damaging information.

The Department continues to determine what will be needed to meet the Administration's Open Government Directive, requiring agencies to reduce their backlogs of FOIA requests by 10 percent each year. The Department's goals related to FOIA compliance for the near future are twofold: to reduce the open FOIA case backlog and deploy enhanced technology on the unclassified networks to improve workflow. In the coming months, the Department will seek to determine the appropriate response and whether an increase in staffing and/or funding is required to meet these needs to both reduce this backlog and to ensure that the FOIA office has the IT capabilities to handle the growing workload going forward.