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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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May 22, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable John F. Kerry
Secretary of State
Office of the Secretary
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Kerry:

Former Secretary of State Hillary Clinton has stated that she turned over approximately 55,000 pages of work-related emails to the State Department that were maintained on a private server located in her personal residence in New York. On April 28, 2015, I sent a letter to you requesting information regarding a number of emails between Secretary Clinton and Mr. Sidney Blumenthal that were exchanged on that private server. The emails were not personal in nature; rather they appeared to include communications with non-government officials regarding official business in Libya and Georgia, among other matters.¹ To date, your office has yet to respond.

On May 18, 2015, the *New York Times* published an article on Secretary Clinton that included additional emails sent between Mr. Blumenthal and Secretary Clinton via her private server while she was Secretary of State.² Notably, the new emails were sent to, and contain responses from, a second personal email address for Secretary Clinton – hrod17@clintonemail.com.³ According to documents released by the *New York Times*, emails from the new address occurred during 2011 and 2012. Secretary Clinton, via her attorney, stated to the House Select Committee on Benghazi that the “hrod17@clintonemail.com is not an address that existed during Secretary Clinton’s tenure as Secretary of State.”⁴ Moreover, via her attorney, Secretary Clinton stated that the hrod17@clintonemail.com address did not exist until

¹ John Cook, “Hacked Emails Show Hillary Clinton Was Receiving Advice at a Private Email From Banned, Obama-Hating Former Staffer,” GAWKER (March 20, 2013). See also, Jeff Gerth, “Leaked Private Emails Reveal Ex-Clinton Aide’s Secret Spy Network,” PROPUBLICA in conjunction with Sam Biddle of Gawker (March 27, 2015).

² Nicholas Confessore and Michael S. Schmidt, “Clinton Friend’s Memos on Libya Draw Scrutiny to Politics and Business,” THE NEW YORK TIMES (May 18, 2015).

³ *Id.*; see also, Exhibit A.

⁴ David E. Kendall, Submission to the House Select Committee on Benghazi on behalf of Secretary Clinton (March 27, 2015).

March 2013, after she left the State Department.⁵ Clearly these statements are inconsistent with the emails obtained by the *New York Times*. Up to this point, Secretary Clinton admitted to using one email address on her personal server while Secretary of State. However, now there appears to be two.

In addition to Secretary Clinton's actions, news reports indicate that her staff, including her Chief of Staff Cheryl Mills, took a special interest in reviewing and approving State Department responses to Freedom of Information Act (FOIA) requests on behalf of Secretary Clinton.⁶ According to the *Wall Street Journal*, Ms. Mills exercised substantial control of document production, going so far as to "flag[] as problematic a few [documents] that the department's records-law specialists felt obligated to release[.]"⁷ In one instance, a State Department employee wrote an email in reference to a pending document release and noted, "I believe, though, that this is still pending with Cheryl Mills' office...The real action, for now, is with Cheryl's office."⁸

In the aggregate, the FOIA management dynamics at the State Department during Secretary Clinton's tenure is troubling. Indeed, the State Department's chief FOIA official recently testified to the Senate Judiciary Committee that Secretary Clinton's actions were "not acceptable." Notably, President Obama declared early in his Presidency that, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."⁹ Moreover, the President stated, "Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve."¹⁰ But as recent reports indicate, it appears the political concerns of senior agency staff are undermining the public's right to know under FOIA. This is, without question, a far cry from the spirit of our nation's transparency laws, as well as from the President's "presumption of openness."

The American people have a right to have records of official government business retained in official government files. Federal law,¹¹ the State Department Records Retention Manual,¹² and federal regulation¹³ impart a number of records retention obligations on employees. These include the requirement that departing employees be reminded about their

⁵ *Id.*

⁶ See Laura Meckler, "Hillary Clinton's State Department Staff Kept Tight Rein on Records," WALL STREET JOURNAL (May 19, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies," regarding FOIA (January 21, 2009).

¹⁰ *Id.*

¹¹ 44 U.S.C. §3101.

¹² U.S. State Department Manual, 5 FAH-4 H-217.1(a)-(b).

¹³ 36 CFR 1236.22(b).

obligations in preserving their email communications and records,¹⁴ surrender classified and unclassified material for review prior to deletion,¹⁵ and attest that the surrender has in fact occurred.¹⁶ These rules are in place so that government records are properly preserved.

The Senate Judiciary Committee has direct jurisdiction over FOIA. Accordingly, the Committee needs a clearer understanding of the effects Secretary Clinton's actions have had on FOIA compliance. If high level officials like Secretary Clinton use not one, but two, private email addresses that can circumvent official government email channels, compliance with the intent, spirit and plain language of FOIA, as well as other relevant law, is in serious doubt.

Please answer the following and refer to the attached Exhibit A, which include some of the alleged work-related and publicly available emails from Secretary Clinton's second private email address:

1. Besides hdr22@clintonemail.com and hrod17@clintonemail.com, did Secretary Clinton use other email addresses while Secretary of State? If so, does the State Department have those emails from those addresses in its possession? In addition, how were the emails acquired?
2. Has the State Department asked Secretary Clinton how many email addresses she used during her tenure as Secretary? If so, what was her answer? If not, why not?
3. Regarding the hrod17@clintonemail.com address, what steps did the State Department take to determine whether Secretary Clinton used her private server for any classified material via that address? Has Secretary Clinton surrendered any classified material to the State Department for review from that address?
4. When and how did the State Department become aware that Secretary Clinton was using two private email addresses?
5. Did Secretary Clinton have the capability to receive, transmit and/or store any classified material in her personal residence? If so, was there any interaction between the secure communication equipment and Secretary Clinton's private email server?
6. If the capability for secure communications did not exist in her personal residence, please describe the manner in which Secretary Clinton received, transmitted and/or stored classified material.

¹⁴ U.S. State Department Manual, 5 FAH-4 H-217.1(a)(1).

¹⁵ U.S. State Department Manual, 5 FAH-4 H-217.2.(a)-(b).

¹⁶ Form OF-109.

7. Generally, is it standard protocol for the Secretary of State's Chief of Staff to review documents subject to a FOIA request before production? Is it within the Chief of Staff's authority to withhold documents from production under a valid FOIA request?
8. When there is a conflict between the State Department's FOIA administrative structure, including specialists in the Office of Government Information Services, and a political appointee regarding a document, which individual/entity ultimately has authority to make the decision to produce the document?
9. When there is a conflict between the State Department's FOIA administrative structure, including specialists in the Office of Government Information Services, and the Chief of Staff to the Secretary of State, which individual ultimately has authority to make the decision to produce the document?

Please number your responses according to their corresponding questions. Please respond no later than June 8, 2015. If you have any questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary