

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

October 12, 2016

VIA ELECTRONIC TRANSMISSION

Kenneth F. Eichner, Esq.
3773 Cherry Creek Drive North #900
West Tower
Denver, CO 80209

counsel for

Platte River Networks
5700 Washington Street
Denver, CO 80216

Dear Mr. Eichner:

For some time now, the Senate Judiciary Committee has been conducting an investigation regarding former Secretary of State Hillary Clinton's use of non-governmental email addresses and servers to conduct official business, and the possible effects of this usage on compliance with Freedom Information Act requests, federal records laws, and Congressional subpoenas. As you know, your client, Platte River Networks (PRN), hosted Secretary Clinton's email services beginning in 2013 via a contract with Clinton Executive Services Corporation (CESC). One of PRN's employees, Mr. Paul Combetta, was extensively involved in maintaining the Clinton email server and interacting with Secretary Clinton's associates. He invoked the Fifth Amendment to the FBI when questioned about conversations with Secretary Clinton's associates, subsequently received an immunity agreement from the Justice Department, and was interviewed by the FBI again. However, he once again invoked the Fifth when questioned on these matters by the House Committee on Oversight and Government Reform. In light of all this, I am writing to ask for your client's cooperation with the Judiciary Committee's investigation. I am also writing to raise the possibility of a potential proffer session to explore whether the Committee can obtain the unique information Mr. Combetta possesses while respecting his constitutional rights and without any waiver of those rights.

Mr. Combetta likely has key information the Committee needs to obtain as part of its ongoing investigation. In particular, we believe he could help explain six key issues:

1. Discrepancies in the FBI accounts of his interviews as to whether he invoked the Fifth Amendment or attorney-client privilege when asked about calls with David Kendall and Cheryl Mills on dates Clinton emails were deleted;
2. Discrepancies in Mr. Combetta's statements to the FBI as to whether PRN deleted Clinton emails;
3. Discrepancies in Mr. Combetta's statements to the FBI as to whether CESC instructed him to delete Clinton emails;
4. Discrepancies in Mr. Combetta's statements to the FBI as to whether he was aware of a Congressional subpoena regarding Clinton emails and a related preservation letter;
5. Whether Mr. Combetta's statements about the impropriety of deleting Clinton emails were made in jest or were serious concerns;
6. Whether CESC or other Clinton associates paid PRN for Mr. Combetta's FBI interviews.

FIFTH AMENDMENT OR ATTORNEY/CLIENT PRIVILEGE

Regarding the first of these topics, a key discrepancy in the FBI's documents describing Mr. Combetta's interviews is whether he invoked the Fifth Amendment or the attorney-client privilege when asked about conversations with David Kendall and Cheryl Mills. As the FBI's 302 of its second interview with Mr. Combetta documented:

After reviewing an email dated March 25, 2015, with the subject line "CESC call," COMBETTA stated he had no recollection of the call or what it was about. COMBETTA then reviewed an email dated March 25, 2015 with the subject line "Clintons" and a work ticket dated March 31, 2015, referencing a conference call with KENDALL and MILLS. At this point in the interview, **COMBETTA's PRN counsel advised COMBETTA not to answer any questions related to conversations with KENDALL based on COMBETTA's protections under the Fifth Amendment.**¹

PRN's log files show manual deletions of backups of the Clinton emails were made on the same days as the calls for which Mr. Combetta asserted the Fifth, March 25 and 31, 2015. This was weeks after the House Benghazi Committee's subpoena and preservation notice for Ms. Clinton's relevant emails, and several months after that Committee's subpoena to the State Department for the same records, many of which Ms. Clinton had alienated from government control via her private server arrangement. Deleting records responsive to Congressional inquiries or agency inquiries can violate 18 U.S.C. §§ 1505 and 1519, respectively, although it appears the FBI did not investigate these issues.

Puzzlingly, the FBI's investigation summary claims that Mr. Combetta relied on attorney-client privilege to refuse to answer questions about the calls with Kendall and Mills, despite the fact the actual FBI 302 of the interview clearly states Mr. Combetta invoked the Fifth Amendment. Although Mr. Combetta entered into an immunity agreement with the Justice Department after his second FBI interview, there is no record in the FBI 302 of his third interview of any description of the March 31,

¹ While Mr. Combetta's name is redacted from both the version of the 302 the FBI provided the Committee and the version it publicly released, other reporting makes it clear he was the interviewee.

2015 work ticket or conference call with Ms. Mills and Mr. Kendall. Nor is there any reference to an assertion of the attorney-client privilege. These discrepancies are troubling and require further investigation. I believe Mr. Combetta could help explain the situation.

PRN DELETIONS OF CLINTON EMAILS

Regarding the second key topic, Mr. Combetta could help explain the inconsistencies in his statements about whether PRN deleted Clinton emails. For example, in Mr. Combetta's initial FBI interview in September of 2015, he told the FBI that PRN never took action to purge or delete CESC emails from the private server or its backup, and in his second interview with the FBI in February of 2016, he further claimed he never deleted the archive mailbox of Secretary Clinton's emails from the server and that it should still be on the server, which was then in the FBI's possession. However, contrary to his initial claim that PRN never deleted any Clinton emails, after the FBI confronted him during his second interview with some emails and work tickets, he then admitted that in December of 2014 he had changed the retention policy to delete all of the Clinton emails that were more than 60 days old; i.e., all of Secretary Clinton's emails from 2009 to October of 2014.

In his third FBI interview in March of 2016, he further contradicted his initial claims. When the FBI confronted him with Exchange Audit Log documents dated March 25 and March 31, 2015 – the dates of his calls with Kendall and Mills – he admitted that he manually deleted the Clinton Archive mailbox from the server. After being confronted by the FBI with documents titled “Bleach Bit – PRN Server” and “Bleach Bit - Exchange Server” indicating the use of Bleach Bit on March 31, 2015, he admitted that he checked the server for remaining copies of Clinton's emails and that whenever he located any relevant .pst file he used Bleach Bit to shred the .pst file of Clinton emails on the server. When confronted with a March 31, 2015 document showing deletion of the backup server, he claimed he “did not recall” deleting the backup server but that “it is unlikely anyone else at PRN would have deleted the files.” The FBI has offered no explanation for the inconsistencies or any analysis as to what intent they may suggest. So, it is important that Mr. Combetta speak with Judiciary Committee staff to resolve these issues.

CESC DELETION INSTRUCTIONS TO PRN

Regarding the third key topic, there are also material inconsistencies in Mr. Combetta's statements regarding the deletion instructions he did or did not receive from Secretary Clinton's associates. In Mr. Combetta's first FBI interview with the FBI in September of 2015, he claimed that CESC never requested that PRN purge or delete any email data associated with their account. However, in his second FBI interview in February of 2016, the FBI confronted him with call logs dated December 9 and 10, 2014, documenting calls with Cheryl Mills and Heather Samuelson, as well as emails from December 10-12, 2014, and a work ticket dated December 12, 2014. Contrary to the claim in his first FBI interview, Mr. Combetta then admitted that CESC had instructed him in December of 2014 to change the email retention policies so as to delete all Clinton emails more than 60 days old – several years' worth. In his third interview, during which the FBI showed him additional work tickets and emails, he admitted that after he had sent copies of the Clinton emails to Mills and Samuelson in September of 2014, Cheryl Mills instructed him to delete those exported .pst files from Mills' and Samuelson's computers in December of 2014, and that “based on the request of Mills” he “recommended Bleach Bit,” which he used to shred the .pst files. Combetta also stated in his second FBI interview that someone from CESC told him at some point that he or she did not want

the .pst files of Clinton emails hanging around and wanted them off the PRN servers after export – yet another CESC instruction to delete Clinton emails.

So, after being confronted with documents proving otherwise, Mr. Combetta repeatedly contradicted his initial claim that no one at CESC had instructed him to delete Clinton emails. Moreover, when he was asked about conversations with Mills and Kendall in March of 2015 that corresponded with additional PRN deletions of Clinton emails—which occurred well after the Benghazi Committee had issued a subpoena and preservation instruction—Mr. Combetta invoked the Fifth Amendment regarding those conversations. Accordingly, a proffer session with Committee investigators may well be necessary to learn what happened.

FAMILIARITY WITH PRESERVATION LETTER

The fourth topic concerns Mr. Combetta’s conflicting statements about his awareness of a Congressional subpoena relating to Secretary Clinton’s email and an associated preservation letter. Mr. Combetta claimed in his second FBI interview that he was unfamiliar with an email from David Kendall dated March 9, 2015, which contained a Congressional preservation notice relating to the subpoena, despite the fact he was listed as a recipient of the email. Yet, in his third FBI interview, Mr. Combetta acknowledged that he was aware of the Congressional preservation notice and understood that it meant he should not disturb Clinton’s email data. It is also important that the Committee understand how PRN treated this preservation notice, and provide your client an opportunity to resolve this discrepancy.

PROPRIETY OF THE CLINTON EMAIL DELETIONS

Mr. Combetta should also have an opportunity to discuss the fifth topic with Committee investigators, namely to explain his own understanding of the propriety of the email deletions. In his second FBI interview, the FBI confronted Mr. Combetta with a PRN email dated December 11, 2014 in which he referenced “**the Hilary [sic] coverup [sic] operation.**” He told the FBI that this was probably a reference to the recent instructions to change the email retention policy so as to delete all emails older than 60 days, that the comment was a joke, and that he did not recall the prior retention policy. However, a letter from the Chairman of the Senate Homeland Security and Government Affairs Committee, Senator Johnson, to PRN referenced a PRN email that stated: “Starting to think this whole thing really is covering up some shady [sic] sh[*]t. ... I just think if we have it in writing that they told us to cut the backups, and that we can go public with our statement saying we have backups since day one, then we were told to trim to 30days [sic], it would make us look a WHOLE LOT better.”² This seems to undermine the claim that Mr. Combetta was joking when referencing a “Hillary cover-up” and that he was unaware of the prior retention policy. It does not appear that the FBI followed up on this issue, and the Committee would like to do so.

CESC PAYMENTS TO PRN FOR MR. COMBETTA’S FBI INTERVIEWS

Lastly, according to a purported PRN invoice publicly reported by the media, PRN billed the Clintons’ accounting firm for Mr. Combetta’s first FBI interview—the interview in which Mr. Combetta provided his false denials claiming that PRN had not deleted any Clinton emails and that

² Rachael Bade, *Employee at Clinton’s Email Hosting Company Feared a Cover-Up*, POLITICO, Oct. 5, 2015. Available at: <http://www.politico.com/story/2015/10/hillary-clinton-emails-server-214487>

CESC had not instructed PRN to delete any Clinton emails.³ The Committee also seeks to understand the financial arrangement PRN had with Secretary Clinton's associates, including CESC and Marcum LLP, for payments relating to Mr. Combetta's initial FBI interview, as well as any subsequent ones and other aspects of the FBI investigation.

In short, the materials the FBI has provided the Committee raise issues that the Committee must follow up on in order to complete its own inquiry. In light of all these issues, please contact my Committee staff by no later than October 19, 2016, to schedule an interview with Mr. Combetta or to discuss the possibility of a proffer session through which the Committee could further assess the possibility of seeking an immunity order in exchange for his testimony.

Additionally please respond to the following by no later than October 26, 2016:

1. Please provide a copy of all agreements related to this matter with the Justice Department.
2. Please provide a copy of the July 18, 2013 Service Level Agreement to host Secretary Clinton's email.
3. Did CESC, Marcum LLP, or any other Clinton associates provide PRN with payment in connection with Mr. Combetta's first FBI interview? If so, what were the terms of this payment? Was PRN compensated in connection with Mr. Combetta's subsequent FBI interviews? Was PRN compensated in connection with other employee interviews with the FBI?
4. Please provide copies of all PRN invoices to CESC, its accountants, or other Clinton associates.
5. Please provide copies of all emails, call logs, and work tickets associated with PRN's work for CESC.
6. Please provide copies of all records relating to contact with the FBI and broader Department of Justice regarding the Clinton investigation.
7. Do you represent PRN as a company? If so, have you explained to Mr. Combetta and other PRN employees that you are not their personal attorney? Does Mr. Combetta have a personal attorney? If so, please provide his or her contact information.

Thank you for your attention to this important matter. If you have any questions, please contact Patrick Davis or Josh Flynn-Brown of my Committee staff at (202) 224-5225.

³ Todd Shepherd, *Platte River Networks Seeks Legal, PR Reimbursements From Clinton*, THE COMPLETE COLORADO, Oct. 19, 2015. Available at <http://completecolorado.com/pagetwo/2015/10/19/document-platte-river-networks-seeks-legal-pr-reimbursements-from-clinton/>

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Patrick J. Leahy
Ranking Member
Senate Committee on the Judiciary

The Honorable James Comey
Director
Federal Bureau of Investigation

The Honorable Michael E. Horowitz
Inspector General
United States Department of Justice