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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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August 19, 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:

A July 17, 2015 memo from the State Department Inspector General (State OIG) and the Intelligence Community Inspector General (IC IG) described a dispute regarding the proper exemptions to claim for redactions being made in preparation for the release of emails from former Secretary Clinton's non-government server.

According to the memo, the dispute arose between State Department Freedom of Information Act (FOIA) specialists and the Office of the Legal Advisor (OLA) attorneys. Specifically, the memo indicates that FOIA specialists believed that the proper exemption to claim for redacting many of the emails was (b)(1), "Classified Information." However, the IC IG and State OIG indicated that some of those exemptions were later changed by OLA attorneys to (b)(5), "Privileged Communications." This dispute may have already contributed to at least one classified email being inappropriately released to the public. Consequently, the IC IG recommended that "[t]he State Department FOIA Office should seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials." However, IC IG and State OIG consider this recommendation to be unresolved and have "reiterated the need to seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials."

The Washington Times has reported that some Department employees have notified the IC IG that Department attorneys involved in reviewing Secretary Clinton's emails appear to have a conflict of interest, or at least a reason to question their objectivity.¹ Some State Department

¹ John Solomon, "Safe given to lawyer among irregularities seen in review of Hillary Clinton emails," THE WASHINGTON TIMES, (August 16, 2015). See also, Laura Meckler, "Hillary Clinton's State Department Staff Kept Tight Rein on Records," WALL STREET JOURNAL (May 19, 2015) reporting on political appointees interfering with FOIA production in an effort to protect Secretary Clinton.

lawyers seeking to avoid citing FOIA exemptions based on classified information in Secretary Clinton's email reportedly worked with her attorney, David Kendall, at Williams & Connolly prior to their current positions at the State Department.² Whistleblowers within the State Department reportedly notified the intelligence community that former colleagues of Mr. Kendall deliberately changed classification determinations to protect Secretary Clinton.³ Reports have publicly identified one State Department lawyer, Catherine "Kate" Duval, who previously worked at Williams & Connolly and is currently working on issues related to the review of Secretary Clinton's email.⁴

As you are aware, the Judiciary Committee has jurisdiction over FOIA matters. Thus, it is necessary for the Committee to better understand the facts and circumstances surrounding the FOIA review of Secretary Clinton's emails, how the disputes about which exemptions to claim are being resolved, and what steps are being taken to ensure any such disputes are resolved fairly and objectively based on the merits rather than on political considerations or any loyalties to the former Secretary and her private counsel.

Accordingly, please provide responses to the following:

1. What has been the Department's response to the IC IG recommendation that "[t]he State Department FOIA Office should seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials."?
2. Please describe the conflict resolution process employed by the State Department when FOIA specialists are in disagreement with OLA attorneys regarding whether to cite a FOIA exemption related to classified information.
3. Please provide copies of all emails from State Department employees documenting concerns about potential conflicts of interest and/or lack of objectivity by OLA attorneys regarding whether to cite a FOIA exemption related to classified information within Secretary Clinton's emails or the email review process more generally.
4. Has Ms. Duval participated in any matters related to FOIA production that directly or indirectly related to the determination of which FOIA exemption should be cited in the course of redacting Secretary Clinton's emails for public release? If so, please detail which determinations she participated in and provide all records relating to her participation.
5. Please provide all State Department records relating to Ms. Duval's communications with David Kendall and all other associates at her former firm, Williams & Connolly.

² John Solomon, "Safe given to lawyer among irregularities seen in review of Hillary Clinton emails," THE WASHINGTON TIMES, (August 16, 2015).

³ *Id.*

⁴ *Id.*

6. Please provide a list of all State Department attorneys who previously worked at Williams & Connolly and are involved directly or indirectly in the review and production of Secretary Clinton's emails.
7. Please list all State Department attorneys who participated in the representation of Secretary Clinton, Huma Abedin, Philippe Reines, and/or Cheryl Mills prior to joining the Department.

Please number your responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than August 31, 2015. If you have questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary