



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 26, 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letters to the Attorney General, dated September 20 and October 5, 2016, requesting additional information related to the Department of Justice's (the Department) investigation into the use of a private email server by former Secretary of State Clinton. We are sending nearly identical responses to the other Members who joined in the October 5 letter. As we discussed with your staff, we appreciate your interest in this matter and have worked diligently to provide responses to the Committee as expeditiously as possible.

As you know, we have provided all of the immunity agreements related to this investigation for *in camera* review by multiple committees, including the Senate Judiciary Committee. We also made available to the Committee for *in camera* review separate letters that provided consent to search, pursuant to negotiated search protocols, two laptop computers that were voluntarily produced to the Federal Bureau of Investigation (FBI) during the course of the investigation. The search protocols in those letters were crafted with the input and guidance of the FBI and provided the FBI with consent to conduct searches deemed necessary as part of its thorough investigation in this matter. We hope that this information has been helpful to the Committee. As you know, in the ordinary course, such documents from a criminal investigation would not be disclosed; however, through the accommodation process, we reached an agreed upon procedure for the Committee's review of the documents in this particular matter. If you are requesting a modification of that procedure, we can discuss such a request with your staff.

With respect to your questions regarding the current status of the laptops and whether they have been destroyed, we can advise you that the laptops have not been destroyed and the FBI has possession of them -- they will be treated by the FBI in accordance with all FBI policies and applicable laws.

With respect to your questions regarding the immunity agreements relating to the two laptops, Director Comey has explained in testimony before Congress that such immunity agreements, which conveyed "use immunity" (not transactional immunity), are part of the ordinary investigative process. As you are aware, the agreements provided that the government

would not use information on the laptops directly against the individuals who voluntarily provided them in a prosecution for certain listed offenses. As further explained in public testimony, the agreements did not prevent prosecution of those individuals for the listed offenses if there was other evidence available from another source. In his testimony before Congress, Director Comey also explained the investigative steps taken by the FBI in the course of its investigation, including its review of information on the laptops.

As to your inquiries regarding whether a grand jury was convened in this matter, as also noted in public testimony, the Federal Rules of Criminal Procedure prohibit the Department from disclosing whether any matters occurred before the grand jury. *See* Fed. Rule Crim. P. 6(e).

We hope that the extraordinary amount of information provided in this case, as well as the Congressional testimony by Department and FBI officials, including the Director of the FBI on multiple occasions, has been helpful to you. As in all cases, the Department strives to provide as much information as possible to Congress to satisfy its oversight interests. However, we must balance and accommodate the respective interests of the coordinate branches in a way that does not harm our ongoing and future law enforcement efforts. The very real concerns that we hope you share include: not subjecting career agents and prosecutors to actual or apparent political pressure; not causing a chilling effect on future cooperating witnesses who might be deterred from voluntarily providing information to the FBI in ongoing and future matters; not deterring the candid and informed legal advice critical to law enforcement decisionmaking within the executive branch; not violating the federal rules of procedure; and not publicly disclosing or highlighting investigative and prosecutorial techniques to those who might seek to exploit or evade such techniques in the future.

The Department also takes very seriously its obligation to protect the privacy interests of individuals about whom information is obtained or developed during law enforcement investigations. Consistent with that responsibility and as a matter of privacy and due process, unless such individuals are publicly charged or identified by the Department as witnesses in the course of public proceedings, it has been the Department's longstanding policy to protect information that would identify individuals and entities that were within the purview of federal inquiries and investigations, such as witnesses, cooperators, targets, subjects, and individuals who were interviewed or investigated but never publicly charged.

Against this backdrop, it is apparent that the disclosure of the investigative materials provided by the FBI and the Department in this matter has, indeed, been unprecedented. In addition to the information and testimony already discussed, the FBI provided for review by Committee Members and appropriately-cleared staff many documents related to the investigation and these materials have been and remain available for review. Furthermore, pursuant to FOIA requests, the FBI has released publicly hundreds of pages of documents related to this matter.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Kadzik", with a stylized flourish at the end.

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Member