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United States Senate

COMMITTEE ON THE JUDICIARY

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May 19, 2016

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:

I am writing to once again request information relating to the security clearances held by Secretary Clinton's associates while she used a private email and server to conduct official State Department business with them. On November 5, 2015, as a result of litigation stemming from the State Department's failure to comply with a Freedom of Information Act (FOIA) request, the Department of State produced a number of documents to a plaintiff FOIA requestor. That production included security clearance related exchanges with respect to Ms. Huma Abedin, Ms. Cheryl Mills and Secretary Clinton. The production also included some copies of Standard Form 312, "Classified Information Nondisclosure Agreement," (SF-312) completed by Ms. Abedin, Ms. Mills, and Secretary Clinton upon entering into their positions at the State Department. In addition, the production included a Sensitive Compartmented Information Non-Disclosure Agreement (EF-4414) completed by Secretary Clinton upon her entrance as Secretary of State as well as a partial exit EF-4414 for Ms. Mills.

As you are aware, on August 5, 2015, I requested that the State Department provide the Committee all SF-312s completed by Ms. Abedin, Ms. Mills, and Secretary Clinton. The Department failed to provide any of those documents to the Committee before producing some to the FOIA requestor. After my staff noted the FOIA release and raised concerns with the State Department about the lack of disclosure to the Committee, the Department produced to the Committee on the evening of November 6, 2015, a copy of the FOIA release that contained the entrance SF-312s for Ms. Abedin, Ms. Mills and Secretary Clinton, but not the exit forms for Ms. Mills or Secretary Clinton. On November 13, 2015, the Department also provided the Committee with less redacted versions of those documents. In light of this partial compliance to date, I again reiterate my request for all remaining SF-312s.

The status of the security clearances held by senior advisors of Secretary Clinton who communicated with her via her private email address is important in light of the fact that classified information has been discovered within the emails Secretary Clinton provided to the State Department. Despite the efforts of some to dispute this, the facts are clear. In July 2015, the Inspector General of the Intelligence Community (IC IG) provided a notification to Congress, along with a public statement cosigned by the Inspector General of the State Department, indicating that the IC IG had sampled 40 of the 30,000 emails provided by Secretary Clinton and discovered that four emails out of the sampled 40 contained classified information.¹ The Inspectors General made it clear that the emails were “not retroactively classified” but rather “contained classified information when they were generated, and, according to IC officials, that information remains classified today.”²

On August 11, 2015, in response to Congressional requests for copies of those sampled emails containing classified Intelligence Community information, the IC IG sent the classified emails to several Senators and Congressmen, along with an unclassified cover letter that noted that the emails attached to the letter “have been properly marked by IC classification officials, and include information classified up to [‘]TOP SECRET//SI//TK//NOFORN.[‘]”³ The cover letter also referenced an additional two emails from the sample of 40, which IC classification officials had judged contained classified State Department information when originated.⁴ The letter noted that this separate batch, not attached to the letter, had been referred to State Department classification officials for a final classification determination.⁵ This was presumably because, contrary to the classified IC information identified in the first batch from the samples, the classified information in the second batch was “owned” by the State Department and not the Intelligence Community.

In November 2015, in an effort to debunk a news article⁶ that incorrectly claimed two of the sampled emails containing Intelligence Community information had since been downgraded to a lower level of classification, IC IG personnel notified the Committee that the Intelligence Community elements that own the classified material have not changed their position, and that accordingly the emails referenced in the article remain classified at the level indicated in the August 11, 2015 letter. Senate Security personnel, who are the custodians of the Committee’s copies of the classified emails, similarly confirmed that there has been no notice of

¹ <https://www.dni.gov/index.php/newsroom/press-releases/210-press-releases-2015/1232-statement-from-the-inspectors-general-of-the-intelligence-community-and-the-department-of-state-regarding-the-review-of-former-secretary-clinton-s-emails>

² *Id.*

³ <http://www.grassley.senate.gov/sites/default/files/judiciary/upload/Classified%20docs,%2008-11-15,%20ICIG%20CN%20-%20Update%20on%20Classified%20Materials%20on%20Personal%20thumb%20drive.%20Clinton%20server.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ Josh Gerstein, “Source: Key Clinton emails did not contain highly classified secrets,” POLITICO (November 6, 2015). Available at <http://www.politico.com/story/2015/11/hillary-clinton-email-no-highly-classified-215599>. The original version of this article claimed that the State Department disputed the TS/SCI classification of these materials, had asked the Director of National Intelligence (DNI) to weigh in on the dispute, and that the DNI had sided with the State Department, determining the emails contained no TS/SCI information. Hours later, the article was updated, without an editor’s note, to include a quote from the Office of the DNI directly refuting the claim that the DNI had made any such determination.

declassification or downgrading, which would affect the handling and access procedures for the Committee's copies of the documents.

Of course, that classification issue only concerned the classified information found in a very small sample of 40 emails out of the 30,000 Secretary Clinton provided to the State Department. The broader classification review for the rest of Secretary Clinton's emails, undertaken as part of processing them for release in response to a Freedom of Information Act lawsuit, determined that over 2,000 of the provided emails contain classified information, with 65 classified Secret, and another 22 classified Top Secret or above.⁷ Moreover, on January 14, 2016, the IC IG notified the Committee that in addition to Top Secret/Sensitive Compartmented Information material being located within Secretary Clinton's emails, material from Special Access Programs – our nation's highest secrets – was also identified. And on January 29, 2016, the State Department itself formally deemed 22 of Secretary Clinton's emails to be Top Secret and withheld them from public release.⁸

Regardless, on March 9, 2016, Senators Leahy, Feinstein, Carper, and Cardin sent a letter to the IC IG alleging that, regarding the classified emails transmitted in the IC IG's August 11, 2015, letter, "it has become clear" that one did not contain classified information and that "the claim that another email was highly classified was reversed." The letter further questioned the integrity of the IC IG's efforts. While the letter contested the classification status of two individual emails deemed classified within the initial sample of 40, it did not specifically reference or contest the more than 2,000 other classified emails, or contest the State Department's own acknowledgement that 22 of the emails are Top Secret. The letter did include the general complaint that "[c]lassification determinations are complex" and "are not normally within the purview of Inspectors General."

On May 6, 2016, the IC IG sent a letter in response. In the unclassified portions of that response letter, the IC IG easily refuted the allegations in the March 9 letter. Contrary to the March 9 letter's questioning of the validity of the classification review on the grounds that classification determinations are not normally within the purview of Inspectors General, the IC IG's response made it clear that the IC IG has rendered no classification determinations; rather, all the classification determinations were rendered by the appropriate Intelligence Community information management officials. As far as the March 9 letter's claims that "it has become clear" that one of the emails attached to the August 11 letter contains no classified information, and the claim that another has since been downgraded in classification, the IC IG response refuted this by reaffirming that the IC IG's assertion, that the emails are classified as "TOP SECRET//SI//TK//NOFORN" and that they were classified at the time of origination, was accurate when reported and remains accurate to this day.

⁷ Jonathan Allen, *U.S. State Department releases final batch of Clinton emails*, Reuters, Feb. 29, 2016. Available at <http://www.reuters.com/article/us-clinton-emails-state-department-idUSMTZSAPEC2TBS46GX>.

⁸ Josh Gerstein and Rachael Bade, *22 Hillary Clinton Emails Declared 'Top Secret' by State Department*, Politico, Jan. 29, 2016. Available at: <http://www.politico.com/story/2016/01/22-hillary-clinton-emails-declared-top-secret-218420>

In short, the IC IG reaffirmed that the August 11 notification sent to Congress, which made it clear that information contained within Secretary Clinton's emails was classified at origination, is correct and unchanged. And the IC IG's letter indicated that there have been no classification downgrades with respect to the emails attached to the August 11 notification. Therefore, to the best of the Committee's knowledge, the emails remain highly classified. Moreover, this purported dispute over the classified emails in the sample of 40 does not particularly effect the fact that over 2,000 additional classified emails were found, including 65 that contained Secret information and an additional 22 that contained Top Secret information or above, when the rest of the 30,000 emails Secretary Clinton provided were examined.⁹

So, despite the attempts of some to insinuate otherwise, the fact remains that highly sensitive and classified information has been identified in Secretary Clinton's emails and that information is still classified today. Therefore, it is imperative that the Committee evaluate the types of security clearances held by Secretary Clinton's closest aides and associates who also had access to this classified information.

Accordingly, in order for the Committee to better evaluate the situation, please provide the following:

1. Please provide all entrance and exit EF-4414 "Sensitive Compartmented Information Non-Disclosure" forms for Cheryl Mills, Philippe Reines, and Jacob J. Sullivan. In addition, please provide all exit EF-4414s for Secretary Clinton.
2. Please provide all OF-109 forms for Philippe Reines, and Jacob J. Sullivan.
3. Please provide all entrance and exit SF-312 forms for Philippe Reines and Jacob J. Sullivan. Please provide all exit SF-312 forms for Cheryl Mills and Secretary Clinton.
4. The Department has noted that it requested the Office of the Director of National Intelligence to review two emails that are TS/SCI in an effort to downgrade the classification level. When was that request made? Was the request formal or informal and under what executive order is the challenge being made? Has the Department appealed the original classification determinations to the Interagency Security Classification Appeals Panel?
5. Has the Department contacted each agency that owns the classified information within those emails to challenge their classification levels? If so, which agencies did it contact and when? If not, why not? In addition, which agencies agreed with the Department's position to declassify or downgrade?

⁹ While press reports have indicated that the FBI has been able to recover some of the additional 30,000 emails that Secretary Clinton deleted rather than providing to the State Department, the Committee has received no indication as to whether those purportedly personal emails also contained classified information.

6. Do Ms. Abedin, Mr. Sullivan and Mr. Reines still retain security clearances issued by the Department? If so, at what level?

7. Since the IC IG made a referral to the FBI pursuant to 50 U.S.C. §3381, has Ms. Abedin, Mr. Sullivan, or Mr. Reines had their security clearance suspended pending the outcome of the inquiry?

Please number your responses according to their corresponding questions and respond by June 2, 2016. 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