

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*

September 28, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Comey,

On September 12, 2016, I gave a speech on the floor of the Senate regarding the FBI's criminal investigation into Secretary Clinton's use of a non-government email server for official business, including its use to transmit and store classified information. In that speech, I mentioned that there were factual discrepancies in the criminal investigative files the FBI provided to Congress. However, the FBI unilaterally announced "handling instructions" in an attempt to prevent Senators from discussing the details publicly.

At the time of my speech, the FBI had produced to the public the Letterhead Memorandum (LHM) summarizing the investigation as well as the summary of Secretary Clinton's FBI interview. However, additional interview reports provided only to Congress contradicted the information given to the public. Thus, in my floor speech, I urged the FBI to release all the material to the public so the people could see all the facts, including the contradictory material. On Friday, September 23, the FBI provided that additional material to the public. Now that the information has been released in a public setting, I'd like to address several issues with you.

The LHM shows that Mr. Paul Combetta asserted the attorney-client privilege in refusing to answer questions related to a conference call he had on March 31, 2016, with Ms. Cheryl Mills and Mr. David Kendall, both attorneys for Secretary Clinton. However, the FBI's report of his interview indicates that he asserted the Fifth Amendment. It is not clear which privilege he actually asserted, but after it was asserted, the Department of Justice granted Mr. Combetta immunity. Congress and the American people deserve clarity on this issue.

It is odd, however, that after granting him immunity, there appears to be no record that the FBI questioned him about the March 31 conference call and no record of his description of

that call, the only topic which he had previously refused to testify. The content of that discussion is crucial given that it occurred around the same time a Congressional subpoena had been issued and around the same time Mr. Combetta deleted thousands of Secretary Clinton's emails. Yet, there is no record of his account of the call after having received immunity in order to obtain it.

Despite informal efforts to obtain an explanation from the FBI for several weeks, the FBI has failed to explain the discrepancy between Mr. Combetta's interview report and the public LHM. To be specific, on page 5 of Mr. Combetta's February 18, 2016 interview report—his second FBI interview—it states that his attorney advised him not to answer questions about his conversations with Secretary Clinton's attorneys around the time that he deleted thousands of emails from Secretary Clinton's server. The basis of the advice is described as "protections under the Fifth Amendment:"

After reviewing an email dated March 25, 2015 with the subject line "CESC call," [redacted]¹ stated he had no recollection of the call or what it was about. [redacted] 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, [redacted] PRN's counsel, advised [redacted] not to answer any questions related to conversations with KENDALL based on [redacted] protections under the Fifth Amendment.

By contrast, the LHM says that he relied on the attorney-client privilege in refusing to answer:

Investigation identified a PRN work ticket, which referenced a conference call among PRN, Kendall, and Mills on March 31, 2015. PRN's attorney advised [redacted] not to comment on the conversation with Kendall based upon the assertion of the attorney-client privilege.

It is unclear whether the immunity he received was able to obtain his answer, but it is crystal clear that his answer is vital. On the same day of the conference call Mr. Combetta deleted archives of Secretary Clinton's emails even though they were subject to a Congressional subpoena and preservation letters, of which he and Secretary Clinton's attorneys were fully aware.² Mr. Combetta used BleachBit software to effectuate the deletions, software that is used

¹ News reports have identified the interview summaries as Paul Combetta's. See Chuck Ross, "Technician Who Deleted Hillary's Emails Pleads The Fifth," *The Daily Caller* (Sept. 13, 2016). Available at <http://dailycaller.com/2016/09/13/technician-who-deleted-hillarys-emails-pleads-the-fifth/>

² See page 6, last paragraph, of Mr. Combetta's May 3, 2016 interview. The U.S. Select Committee on Benghazi issued a subpoena to Secretary Clinton for documents related to the Benghazi attacks. On March 9, 2015, Platte River Networks learned of the preservation letter. See letter from Rep. Jason Chaffetz, Chairman, Committee on Oversight and Government Reform to Platte River Networks (September 6, 2016). To delete the emails, Mr. Combetta used BleachBit. The FBI appears to have been unable to recover the deleted emails.

to “shred[] files to prevent recovery.”³ It is difficult to square these circumstances with your public conclusion that, “[the FBI] found no evidence that any of the additional work-related e-mails were intentionally deleted in an effort to conceal them.”⁴

Mr. Combetta received immunity on May 3. On the same day, FBI interviewed him for a third time, and yet, inexplicably, the FBI interview report does not reference any description of the March 31, 2015 work ticket and conference call with Ms. Mills and Mr. Kendall. Nor does it reference any assertion of the attorney-client privilege. Neither the interview report nor the LHM provide any analysis of how or why an assertion of attorney-client privilege would be valid in this context.

The answers to the questions Mr. Combetta refused to answer appear to be relevant to the FBI’s national security-focused inquiry. Presumably that is why the Department of Justice offered him an immunity agreement. However, Congress has other concerns, including federal records laws, Freedom of Information Act compliance, and potential obstruction of a Congressional inquiry. The emails that were deleted were subject to congressional subpoena and preservation letters. The apparent failure of the FBI to follow this thread of the investigation is the latest evidence suggesting that the scope of its inquiry was artificially narrow.

Based on this documentary record, the investigation appears to have been limited in scope to national security issues. The reason for this limitation has not yet been explained to the public. As a result, the FBI seems to have failed to resolve inconsistencies within its investigative material and pursue leads like this one related to potential obstruction of Congress. Deleting records responsive to Congressional inquiries or agency inquiries can violate 18 U.S.C. §§ 1505 and 1519, respectively. The FBI also appears to have ignored the implications of the evidence it gathered suggesting that the entire server scheme and deletion of work-related emails from it was designed to intentionally alienate federal records from the State Department’s possession, which is also a crime.⁵ Both failures suggest an improper lack of attention and priority placed on these important issues.

Accordingly, please answer the following questions:

1. Please explain in detail the discrepancy between the LHM and the interview report referenced above.
2. In his third interview, did Mr. Combetta describe his memory of the conference call with Secretary Clinton’s attorneys? If so, why is it not reflected in the relevant interview report? If not, why not?

³ BleachBit.org, <http://www.bleachbit.org/news/bleachbit-stifles-investigation-hillary-clinton> (BleachBit “stifles investigation” of Hillary Clinton, August 25, 2016).

⁴ Statement of Director James Comey, July 5, 2016. Available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>

⁵ 18 U.S.C. § 2071 – Concealment, removal, or mutilation generally.

3. A claim of attorney-client communications privilege requires that the information sought is a communication between an attorney and a client. Was Mr. Combetta represented by Ms. Mills and Mr. Kendall at any time?
4. Did the FBI attempt to determine whether the Clintons or their associates paid for Mr. Combetta's or any other witnesses' legal bills or whether these witnesses were a party to a joint defense agreement? If not, why not? If so, what was the result?
5. Was Mr. Combetta a party to any joint defense agreement or were his legal fees being paid by the Clintons or their associates?
6. What steps did the FBI take to determine whether the deletion of emails described above was undertaken with the intent to ensure that they were unavailable in response to a Congressional subpoena and preservation letters?
7. Given these circumstances described above, what is the basis for your conclusion that "[the FBI] found no evidence that any of the additional work-related e-mails were intentionally deleted in an effort to conceal them"?
8. Given that Ms. Mills and Ms. Heather Samuelson were the subject of the investigation and reportedly received an immunity deal from the Department of Justice, why did the FBI agree to allow them to participate in Secretary Clinton's interview with the FBI?
9. With respect to Secretary Clinton's FBI interview, was any consideration given to foregoing a voluntary interview in favor of compulsory process if Secretary Clinton insisted on having another fact witness present to represent her? If not, why not?
10. Why did the FBI fail to pursue a case that the non-government server setup and subsequent email deletions were part of an intentional effort to alienate federal records from the State Department?

Please answer the questions according to their corresponding questions. I anticipate that your written reply and any responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. Please respond no later than October 12, 2016. If you have questions, contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary