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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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March 16, 2016

**VIA ELECTRONIC TRANSMISSION**

The Honorable Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Under Secretary Kennedy:

As you are aware, this Committee is currently investigating a number of issues surrounding Secretary Clinton's non-governmental server arrangement and personal email use for official government business, including whether the arrangement interfered with Freedom of Information Act (FOIA) and Federal Records Act (FRA) compliance. As Under Secretary of Management, FOIA and FRA issues are within your purview. During the course of the investigation, it appears that Secretary Clinton did not turn over to the Department of State (Department) all federal records. For example, Sidney Blumenthal turned over approximately 15 emails sent to Secretary Clinton to the Benghazi Committee that she did not likewise submit.<sup>1</sup> In addition, emails between General David Petraeus and Secretary Clinton, which she failed to submit, were later turned over by the Defense Department.<sup>2</sup> The Committee is also investigating the potential mishandling of classified information by Secretary Clinton and her senior staff. Over 2,000 emails containing classified information were transmitted through and stored on Secretary Clinton's server. Some of those emails include information classified at the TS/SCI level as well as information from Special Access Programs – some of our nation's highest national security secrets.<sup>3</sup>

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<sup>1</sup> Michael S. Schmidt, "State Dept. Gets Libya Emails That Hillary Clinton Didn't Hand Over," THE NEW YORK TIMES (June 25, 2015). Available at [http://www.nytimes.com/2015/06/26/us/state-dept-gets-libya-emails-that-clinton-didnt-hand-over.html?\\_r=0](http://www.nytimes.com/2015/06/26/us/state-dept-gets-libya-emails-that-clinton-didnt-hand-over.html?_r=0)

<sup>2</sup> Elise Labott and Ross Levitt, "New Hillary Clinton email chain discovered," CNN (Sept. 25, 2015). Available at <http://www.cnn.com/2015/09/25/politics/hillary-clinton-emails-david-petraeus-benghazi/>

<sup>3</sup> Letter from I. Charles McCullough, III, Intelligence Community Inspector General, to Chairman Burr and Chairman Corker (Jan. 14, 2016).

Since August 2015, the Committee has attempted to interview Mr. Bryan Pagliano regarding these issues. Given the fact Mr. Pagliano was reportedly paid by the Clintons to oversee and maintain the non-government server while he was still at the Department, he most likely has relevant and unique information about this matter. On March 2, 2016, the *Washington Post* reported that the Department of Justice granted immunity to Mr. Pagliano.<sup>4</sup>

During the course of the investigation, email communications provided to the Committee have illustrated that, as Under Secretary of Management, you played an integral role in the Department's eventual hiring of Mr. Pagliano in the Bureau of Information Resource Management (IRM).<sup>5</sup> According to a March 9, 2009 email, it appears that you passed Mr. Pagliano's resume to a senior official in IRM presumably to inquire about the Department potentially hiring him.<sup>6</sup> Even before Mr. Charlie Wisecarver, then-Deputy Chief Information Officer, actually interviewed Mr. Pagliano, on February 23, 2009, Ms. Laura Pena emailed you and said the following:

Please let me know when you are ready to give Bryan his assignment at IRM, I'd like to give him a heads up and a better idea of the position.<sup>7</sup>

After receiving that email, you emailed Mr. Wisecarver and Ms. Swart and asked the following:

How did the conversation go and have you reached an arrangement?<sup>8</sup>

Mr. Wisecarver responded by saying he had yet to actually contact Mr. Pagliano. In subsequent emails between Mr. Wisecarver and Ms. Susan Swart, then-Chief Information Officer for the Department, there was some concern about the process to actually hire Mr. Pagliano given that IRM did not have regular experience with Schedule C employees.<sup>9</sup>

Further, according to Department personnel, Schedule C employees must report directly to a presidentially appointed position. But, there were no such positions at IRM at that time. Accordingly, as a technical matter, Mr. Pagliano was required to report to you.<sup>10</sup> Subsequent emails noted that this reporting relationship was not a "traditional supervisor/employee" relationship, indicating that Mr. Pagliano would primarily report to the Deputy Chief Information Officer, Mr. Wisecarver.<sup>11</sup> It is not clear to what extent you supervised Mr. Pagliano.

It is also not clear why you wanted Mr. Pagliano to work at the Department and who first brought Mr. Pagliano to your attention and what request, if any, was made to you to act on his behalf. Whatever that request was, emails indicate you took a serious interest in ensuring that Mr. Pagliano was eventually hired. Mr. Pagliano has refused to cooperate with the Committee

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<sup>4</sup> Adam Goldman, "Justice Dept. grants immunity to staffer who set up Clinton email server," THE WASHINGTON POST (March 2, 2016).

<sup>5</sup> Attachment A.

<sup>6</sup> Attachment B.

<sup>7</sup> Attachment A.

<sup>8</sup> *Id.*

<sup>9</sup> Attachment C.

<sup>10</sup> Attachment D, Bryan M. Pagliano position description.

<sup>11</sup> Attachment B.

citing his Fifth Amendment right against self-incrimination. Given the fact that the Department of Justice has granted him immunity, and in light of the fact during Mr. Pagliano's tenure at the Department he was personally paid by the Clintons to maintain and oversee Secretary Clinton's non-government server, it is imperative to determine to what extent you knew about that non-government server and Mr. Pagliano's role with respect to it.

These questions are of serious importance because over 2,000 emails transmitted through and stored on that server are classified and contain highly classified national security information, some of which was classified at origination.<sup>12</sup> In addition, Secretary Clinton's non-government server was outside Department systems and government security protocols which made it unencumbered by regular FOIA and federal records requirements. As I am sure you are aware, alienation of federal records is a crime and Secretary Clinton's failure to turn over official emails that were later produced by others is alarming and casts doubt on the process by which she and her attorneys' determined what was official and what was personal. It is not known how many more emails were improperly deleted. In your role as Under Secretary of Management, federal records preservation, alienation thereof, as well as classified information spillage, falls directly within your purview. Accordingly, please answer the following:

1. When did you learn about Secretary Clinton's non-government server?
2. Did Secretary Clinton, or her senior advisors, inform you of the non-government server? If so, who? If not, why not?
3. Did you approve or otherwise authorize, implicitly or explicitly, Secretary Clinton's non-government server and email arrangement? If so, when? Please provide all records relating to that approval or authorization.
4. When did you learn about Secretary Clinton's use of a non-government email account for official purposes?
5. Did Secretary Clinton, or her senior advisors, inform you of the non-government email account? If so, who? If not, why not?
6. When you learned of the non-government server and email account, what steps did you take to ensure that it was subject to FOIA and compliant with all recordkeeping demands contained within the Foreign Affairs Manual, Foreign Affairs Handbook, FOIA, FRA, and National Archives and Records Administration regulations?
7. When you learned of the non-government server and email account, what steps did you take to ensure that classified information was not transmitted through it or stored on it?
8. When did you first become aware that classified information was transmitted to and stored on the non-government server?

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<sup>12</sup> Letter from I. Charles McCullough, III, Intelligence Community Inspector General, to Congress (August 11, 2016).

9. When you learned that classified information was transmitted to or stored on the non-government server, what steps did you take to ensure that information was properly secured and protected?
10. Who first brought Mr. Pagliano to your attention and when did that happen? Please describe the interaction in detail.
11. Who provided Mr. Pagliano's resume to you and when was it provided?
12. With respect to Mr. Pagliano, what request was made to you on his behalf and who made it?
  - a. Were you instructed to ensure that he was hired?
  - b. Was it suggested to you that he should be hired?
13. When did you first learn that Mr. Pagliano was maintaining, or otherwise working on, Secretary Clinton's non-government server?
14. As his supervisor, when did you find out that Secretary Clinton was paying Mr. Pagliano to maintain her non-government server?
15. After learning of his role managing and overseeing the non-government server, did you take steps to ensure that his dual employment was properly documented by the Department, that conflicts of interest were properly vetted, and that his role with the server was otherwise legal? If so, what steps did you take? Please provide all documentation relating to those actions. If not, why not?
16. What steps did you take to ensure that the server maintained by Mr. Pagliano met government IT security standards? Please provide all documentation relating to those actions.
17. Did you have any role in arranging an IT security briefing in late 2010 or early 2011 for Mr. Pagliano in connection with his work on the Secretary's non-government server? If so, please describe your role in detail.
18. Please describe your supervisory role over Mr. Pagliano.
  - a. Approximately how many times a month did you meet with him?
  - b. What projects, if any, did you ask him to complete?
  - c. How often did you check in with the Deputy CIO to inquire about Mr. Pagliano's job performance?

Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions and respond no later than March 30, 2016. 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