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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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June 18, 2018

**VIA ELECTRONIC TRANSMISSION**

The Honorable Christopher Wray  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W.  
Washington, D.C. 20535

Dear Director Wray:

On June 14, the Committee received the Department of Justice Office of Inspector General report entitled, “A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election.”<sup>1</sup> The report found that FBI employees Peter Strzok, Lisa Page, and even former Director James Comey used personal e-mail accounts and devices to conduct official government business in violation of FBI policy.<sup>2</sup> The revelation about Mr. Comey’s use of personal email for work was new. Thus, it is important to understand what steps the FBI has taken, if any, to retrieve work-related communications from former Director Comey’s personal email account.

In reply to questions last month about Mr. Strzok and Ms. Page’s use of personal devices, the FBI asserted that it is not “obligated” to collect *all* communications between employees. Of course, it is not obligated to collect all such communications. However, the FBI *is* obligated to collect and preserve work-related communications that constitute federal records—just as the State Department and all other federal agencies must do. Thus, on May 4, I asked you to explain to the Committee why the FBI failed to search or even request that Ms. Page and Mr. Strzok voluntarily produce official work-related material from their personal devices or e-mail accounts.<sup>3</sup> My letter cites specific examples of texts that appear to be evidence of intent to use personal devices for work-related communications. The Committee has received no reply.

The Department’s records keeping policy requires all business-related email to be forwarded to a DOJ e-mail.<sup>4</sup> The law requires that: “The head of each Federal agency. . . *shall*

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<sup>1</sup> Justice Department Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 14, 2018) at 424, available at <https://www.justice.gov/file/1071991/download>

<sup>2</sup> *Id.* at 395, 425

<sup>3</sup> Letter from Chairman Charles Grassley, Sen. Comm. on the Judiciary to Director Christopher Wray, Federal Bureau of Investigation (May 4, 2018), available at [https://www.judiciary.senate.gov/download/grassley-to-fbi\\_-strzok--page-records](https://www.judiciary.senate.gov/download/grassley-to-fbi_-strzok--page-records).

<sup>4</sup> Justice Department Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 14, 2018) at 424, available at <https://www.justice.gov/file/1071991/download>

initiate action through the Attorney General for the recovery of records the head of the Federal agency knows or has reason to believe have been unlawfully removed from that agency[.]<sup>5</sup>

When the OIG asked former Director Comey if he was concerned about his decision to conduct FBI business on his personal laptop or email, he admitted he was unsure whether he acted in accordance with FBI regulations. He stated, “I don’t know. I think so, but I don’t know. I remember talking to Jim [Rybicki] about it at one time, and I had the sense that it was okay.”<sup>6</sup> DOJ policy states:

In general, DOJ email users should not create or send record emails or attachments using non-official email accounts. However, should exigent circumstances require the use of a personal account to conduct DOJ business, the DOJ email user must ensure that the communicated information is fully captured in a DOJ recordkeeping system within 20 days. If sending the email from a non-official account, the email user must copy his or her DOJ email address as a recipient. If receiving a DOJ business-related email on a non-official account, the DOJ email user must forward the business-related email to his or her DOJ email account. Once the user has ensured the capture of the email information in the DOJ account, the DOJ email should be removed from the non-official account.<sup>7</sup>

It is unclear whether this policy applies to text messages, but when texts are federal records, then it should. The OIG found that former Director Comey’s use of a personal e-mail account for FBI business was inconsistent with Department policy.<sup>8</sup>

Under 18 U.S.C. § 2071, it is illegal to willfully and unlawfully conceal, remove, or destroy a federal record, even if it is unclassified. However, there are also serious questions about Director Comey’s transmission of his memos about conversations with President Trump, some of which contained classified information, to Daniel Richman, Patrick Fitzgerald, and David Kelley. Secretary Clinton alienated thousands of federal records when she used a non-government server and email for official work. Many of those records were deleted rather than returned to the State Department when the Department requested them. Some of those records contained classified information. Here, it appears as if the FBI has not even sought the return of those records.

In attempting to excuse her use of a non-government email system for official business, Secretary Clinton claimed that she copied government accounts on all of her correspondence. However, that turned out to be untrue. According to the Inspector General’s report, former Director Comey gave the same explanation for his use of a private Gmail account. However, unlike the Clinton case, there appears to have been no independent verification by the Inspector General or the FBI. Without access to his private account, independent verification is

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<sup>5</sup> 44 U.S.C. § 3106

<sup>6</sup> Justice Department Inspector General, *A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election* (June 14, 2018) at 426, available at <https://www.justice.gov/file/1071991/download>

<sup>7</sup> *Id.* at 424

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

impossible. The Justice Department should apply at least as much scrutiny to its own former Director as it applied to the former Secretary of State.

It is disturbing that FBI employees tasked with investigating Secretary Clinton, including the former Director, appear to have engaged in strikingly similar conduct. Although it does not appear as egregious and prolonged, they also used non-government systems for official work. In the FBI's response to the Inspector General's report, it claims, "there is no finding *or indication* that any classified material *ever* transited former Director Comey's, Ms. Page's, or Mr. Strzok's personal devices or accounts."<sup>9</sup> However, unless the FBI has obtained and examined those records, then it simply cannot know one way or the other.

In a Fox News interview, former Director Comey was asked whether the Inspector General had interviewed him about the handling of his memos regarding conversations with President Trump, some of which are now marked classified. Comey replied: "Sure. Yes. . . . has already and I expect a report from them not on the handling of classified information because that's frivolous but on did I comply with policy?"<sup>10</sup>

Please answer the following no later than June 29, 2018:

1. Has the FBI requested that former Director Comey provide any official work-related material from his personal devices and email accounts or access to those accounts? If not, why not? If so, did he cooperate?
2. Has the FBI conducted or attempted to conduct searches of non-FBI-issued communications devices or non-FBI email accounts associated with former Director Comey for official work-related material? If not, why not?
3. Do you agree with former Director Comey that the question of whether he transmitted classified information on unclassified systems is "frivolous"?
4. Has the FBI taken any steps to secure, retrieve, or clean any classified information transmitted by former Director Comey off of any unclassified computer systems? If so, please explain in detail what steps were taken and when.
  - a. If the answer is yes, then please describe how that answer is consistent with the FBI's claim that there was no "indication" that classified information "ever" transited Director Comey's personal email.

I anticipate that your written reply and most 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

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<sup>9</sup> *Id.* at Attachment B

<sup>10</sup> *Special Report with Bret Baier Interview with James Comey* (Apr. 26, 2018), available at <http://video.foxnews.com/v/5776982597001/?#sp=show-clips> (Emphasis added)

governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions.

Should you have any questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

cc: The Honorable Rod Rosenstein, Deputy Attorney General  
The Honorable Dianne Feinstein, Ranking Member  
The Honorable Michael Horowitz, Inspector General