



## MEMORANDUM

October 28, 2016

**To:** House Republican Members

**From:** Chairman Devin Nunes, Permanent Select Committee on Intelligence  
Chairman Bob Goodlatte, Committee on the Judiciary  
Chairman Jason Chaffetz, Committee on Oversight and Government Reform

**Re:** FBI Investigation of Secretary Clinton's Server

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Today Director Comey informed Congress the FBI is investigating new emails pertinent to its investigation of Secretary Clinton's personal email server. According to the Director, he learned this information yesterday from the investigative team which conducted the Clinton server investigation. He immediately agreed the FBI should take "appropriate investigative steps" to allow investigators to review the emails.

After an investigation that began on July 10, 2015, Director Comey announced on July 5, 2016 that the FBI was completing its investigation.<sup>1</sup> Two days later, in hearing testimony before the House Oversight and Government Reform Committee, Director Comey stated: "I'm doing this 24 hours after the investigation closed."<sup>2</sup>

Director Comey stated that he sent today's letter to Congress because he had previously testified to Congress that the FBI had completed its investigation, and believed his testimony needed to be supplemented. The letter was sent to the eight House and Senate committees with jurisdiction over the FBI, including the Permanent Select Committee on Intelligence, the Committee on the Judiciary, the Committee on Appropriations, Subcommittee on Commerce, Science, Justice and Related Agencies, and the Committee on Oversight and Government Reform. It is attached.

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<sup>1</sup> <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>.

<sup>2</sup> <https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg21323/pdf/CHRG-114hhrg21323.pdf>.

## **BACKGROUND**

In October 2014, the State Department wrote to former Secretary of State Hillary Clinton to request that she produce to the Department any emails sent or received on a personal email account that might constitute Federal Records. On December 5, 2014, Secretary Clinton's attorneys produced approximately 30,000 emails (60,000 hard-copy pages) to the Department. The State Department immediately began reviewing the emails, and in February 2015 produced 296 Benghazi-related emails to the Select Committee on Benghazi. On March 2, 2015, *The New York Times* reported Secretary Clinton's exclusive use of private email account while at the State Department.<sup>3</sup> Two days later, the Associated Press reported that the email account had been hosted on private server.<sup>4</sup>

In June 2015, the Office of the Inspector General of the Intelligence Community (IC IG) learned that classified information was not redacted in one of the Clinton server emails made public in a May 22, 2015 Freedom of Information Act release by the State Department, and that classified information was therefore outside the control of the U.S. government.

On July 6, 2015, IC IG Charles McCullough referred the matter to the FBI, and on July 10, 2015, the FBI opened its investigation. The investigation took a year and involved interviews of approximately 90 individuals, concluding with a July 2, 2016 interview of Secretary Clinton herself. Three days later, on July 5, 2016, Director Comey announced the results of the investigation at a public press conference.<sup>5</sup>

On December 5, 2014, Secretary Clinton's attorneys provided approximately 30,000 emails to the Department of State for review. Director Comey's July 5, 2016 public statement indicated the FBI discovered several thousand work-related emails that were not in the group returned by Secretary Clinton's attorneys to the State Department. He stated: "It is also likely that there are other work-related e-mails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all e-mails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery."<sup>6</sup> At the completion of its investigation in August 2016, the FBI provided nearly 15,000 new emails to the Department of State for review.

The FBI's case file, available in redacted form online, shows the FBI found that 81 email chains containing approximately 193 individual email exchanges were classified from CONFIDENTIAL to TOP SECRET at the time they were drafted on UNCLASSIFIED systems and sent to or from Secretary Clinton's personal server. Of the 81 chains, 68 remain classified.<sup>7</sup>

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<sup>3</sup> <http://www.nytimes.com/2015/03/03/us/politics/hillary-clintons-use-of-private-email-at-state-Dep't-raises-flags.html>.

<sup>4</sup> <http://finance.yahoo.com/news/clinton-ran-homebrew-computer-system-081052887.html>.

<sup>5</sup> <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>.

<sup>6</sup> *Id.*

<sup>7</sup> <https://vault.fbi.gov/hillary-r.-clinton>.

Below are highlights from the FBI's most recent production to Congress, on October 14, 2016. Versions of these documents redacted pursuant to FOIA were also made public on October 17, 2016, completing the FOIA release of nearly the entire FBI case file.<sup>8</sup>

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FBI documents make clear the extraordinary special treatment the State Department gave to Secretary Clinton's emails. It's difficult to understand why the FBI didn't produce these documents as part of the original case file production. The FBI claimed they were not significant and only handed them over upon insistence from Congress.

The State Department put immense pressure on its own employees and on the FBI to determine none of the information in Secretary Clinton's emails was classified (Part 04 of 04 [FBI Records Management Division employee], at 25-27; Part 04 of 04 [FBI International Operations Division employee], at 28; Part 04 of 04 [Office of Information Programs and Services employee #2], at 55-56; see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 42-43).

- In the spring of 2015, Under Secretary Patrick Kennedy contacted a senior FBI official to request the FBI reverse its finding that one of Secretary Clinton's Benghazi-related emails contained classified information (Part 04 of 04 [FBI International Operations Division employee], at 28; Part 04 of 04 [FBI Records Management Division employee], at 25-27). Kennedy allegedly assured the FBI official State would "archive the document in the basement of [the Department] never to be seen again," withholding it from the public under Freedom of Information Act (FOIA) exception (b)(9), which relates to geological and geophysical information (Part 04 of 04 [FBI International Operations Division employee], at 28).
- In response, the FBI official proposed a "quid pro quo" to downgrade the classification if the State Department would support increasing FBI personnel into Iraq (Part 04 of 04 [FBI Records Management Division employee], at 25-27); Part 04 of 04 [FBI International Operations Division employee], at 28-29). A veteran diplomat like Kennedy should have been receptive to the FBI's personnel needs without resorting to a bargain that could threaten national security information. Due to the sensitive nature of the information, the classification was never ultimately downgraded (Part 04 of 04 [FBI Records Management Division employee], at 25-27).
- Thereafter, the State Department stopped conferring with the FBI on classification decisions related to Secretary Clinton's emails, and instead consulted with the Department of Justice to represent FBI equities (Part 04 of 04 [Office of Information Programs and Services employee #2], at 55; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52).

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<sup>8</sup> Available at <https://vault.fbi.gov/hillary-r.-clinton/hillary-r.-clinton-part-04-of-04/view>.

Career State Department personnel who typically handle FOIA requests told the FBI the process for reviewing and releasing Secretary Clinton's emails was highly unusual, coordinated through the Office of Legislative Affairs rather than the normal FOIA office, and that decisions were made far differently for these emails than for any other FOIA request (Part 04 of 04 [Office of Information Programs and Services employee #2], at 54-56; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52; Part 04 of 04 [State Department Office of Inspector General], at 91-92; see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 42-43).

- These career public servants, which normally process FOIA requests, considered it odd that a separate system was set up to review the Clinton emails, including bringing on Austin Evers and former IRS employee Kate Duval, both of whom had formerly worked at Williams & Connolly – the very same law firm representing Secretary Clinton (Part 04 of 04 [Office of Information Programs and Services employee #2], at 54-56; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52; Part 04 of 04 [Office of the Inspector General of the Intelligence Community employee], at 88-89).
- The two Legislative Affairs attorneys met regularly with a group of senior State Department officials which the career personnel dubbed “the shadow government” (Part 04 of 04 [Office of Information Programs and Services employee #2], at 56). The group included Secretary Kerry's Chief of Staff, Under Secretary for Management Patrick Kennedy, and others, who met to decide how to respond to Congressional and FOIA requests related to Secretary Clinton (Part 04 of 04 [Office of Information Programs and Services employee #2], at 56).
- Secretary Clinton has said her federal records were preserved throughout her tenure through the Department employees who received emails from her. Accordingly, the State Department sent a Department-wide request to produce to the FOIA office any emails with Secretary Clinton. Yet when Secretary Clinton's lawyers produced a limited batch of emails, some of them involved employees who claimed they had no emails with Secretary Clinton (Part 04 of 04 [State Department Office of Inspector General], at 91-92). The FOIA office considered itself unable to compel the employees, and State failed to take any further action to discover if the employees had additional emails that had not yet been produced (Part 04 of 04 [State Department Office of Inspector General], at 91-92).

The documents included new details about how Secretary Clinton and her attorneys handled information and classified facilities.

- Clinton regularly violated Sensitive Compartmented Information Facility (SCIF) rules by carrying her BlackBerry into the secure area, and also by requiring her Diplomatic Security protective detail agents to hold the BlackBerry in the SCIF, thus requiring them to violate security rules (Part 04 of 04 [State Department Bureau of Diplomatic Security], at 45).

- Even after the FBI took possession of jump drives and one laptop of Secretary Clinton's emails from her attorneys on August 6, 2015, the attorneys retained six additional laptops until August 17 (Part 04 of 04 [Katherine Turner], at 59-60; Part 04 of 04 [Katherine Turner], at 39). One of the laptops was repeatedly used to access the internet even after Secretary Clinton's emails were on the computer – including the classified ones (Part 04 of 04 [Katherine Turner], at 39).
- Secretary Clinton's attorneys acknowledged that some attorneys who viewed the emails did not have security clearances (Part 04 of 04 [Katherine Turner], at 39).
- One of Secretary Clinton's former associates assigned to review her emails for production back to the Department of State used laptops manufactured by a Chinese company for the sorting, opening all the classified email content to potential exploitation and hacking by the Chinese government. (Part 03 of 04 [Heather Samuelson], at 150). The State Department banned the use of Lenovo computers on their classified systems in 2006.
- Williams and Connolly originally suggested that they had 14 boxes of Clinton emails, but only 12 were picked up, and no one knows what happened to the other two (Part 04 of 04 [Office of Information Programs and Services employee #2], at 53-54; [Office of the Inspector General of the Intelligence Community employee], at 88-89); see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 40).