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September 15, 2016

Mr. Patrick F. Kennedy  
Under Secretary of State for Management  
Senior Agency Official for Records Management  
United States Department of State  
2201 C Street, NW  
Washington, DC 20520-6421

Dear Mr. Kennedy:

Now that the Department of State's Inspector General has completed his investigation of the records management practices of the Office of the Secretary, I would like to follow up on my letter of March 14, 2016, and prior correspondence concerning the recovery of Federal email records of the former Secretaries of State and their staff. We are specifically interested in the progress that the Department is making on those open items noted in prior correspondence.

Earlier this year we met with Transparency Coordinator Ambassador Janice Jacobs and the Electronic Records Management Working Group (ERMWG) to discuss their work on improving electronic records management, including meeting the goals of the OMB/NARA Managing Government Records Directive (M-12-18). We are interested in hearing more from the group, including the Department's progress on its Capstone implementation for email and actions responsive to the recommendations from the May 2016 Office of the Inspector General report, ESP-16-03 Office of the Secretary: Evaluation of Email Records Management and Cybersecurity Requirements. We recommend convening a follow up meeting with Ambassador Jacobs and the ERMWG this fall.

We are aware that, per your letters to the FBI of September 14, 2015, and July 8, 2016, the Bureau has provided the Department with many thousands of emails that it recovered from her various personal servers, devices, and backup media. Please keep us informed of how many new Federal record emails are included in that collection. I am also coordinating with the Office of Information Programs and Services on assisting in the review of non-record personal emails that may be part of this collection.

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We would also like to reiterate the request that we made in our correspondence of July 2, 2015, and March 14, 2016, that the Department should seek the recovery of any extant email Federal records of former Secretary of State Colin Powell. We note that during your September 8, 2016, testimony before the House Committee on Oversight and Government Reform, you stated that former Secretary of State Colin Powell did not reply to the Department's request to ask his email service provider, AOL, to attempt to recover emails that he sent or received that are Federal records. You further stated that the Department itself had not contacted AOL directly, based on advice from the Office of the Legal Adviser.

We would like to clarify that, in accordance with the Federal Records Act at 44 U.S.C. 3106, the Department has authority to seek the recovery of Federal records from outside parties. If AOL responds that it needs the permission of the email account holder, then the Department can request such permission from Secretary Powell. If AOL nonetheless refuses to provide the Department with access, then we can request that the Attorney General initiate action to recover the records. On the other hand, if AOL informs the Department that it no longer retains emails from the time period that Secretary Powell served and has no way of recovering them, then you can report that information to us.

We look forward to hearing back from you on actions and progress that the Department is making to resolve all outstanding items on this case.

Sincerely,



LAURENCE BREWER  
Chief Records Officer  
for the U.S. Government

Cc: Ambassador Janice L. Jacobs  
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