



Laurence Brewer <laurence.brewer@nara.gov>

Response to State

13 messages

Laurence Brewer <laurence.brewer@nara.gov>

Mon, Feb 29, 2016 at 4:55 PM

To: "Stem, GaryM" <garym.stem@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Clavelli, Lisa" <lisa.clavelli@nara.gov>

Hi everyone, and welcome back Gary, hope you're still in one piece!

Attached is a Word doc (because I know you dont like Google) of the draft response to State following up on their letter of Nov 6. Hopefully this captures our major asks, but please feel free to add/suggest/edit as you think best.

L.

 State Letter to Brewer, November 6, 2015.pdf

 ResponsetoStateMarch2016.docx
14K

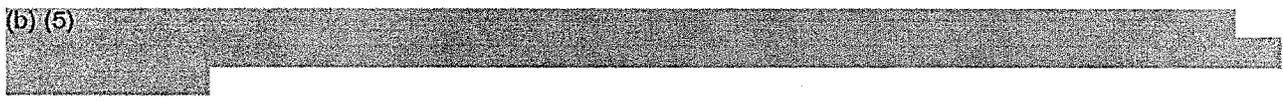
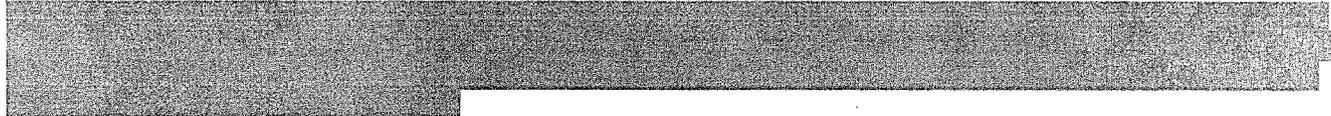
Lisa Clavelli <lisa.clavelli@nara.gov>

Wed, Mar 2, 2016 at 7:15 AM

To: Laurence Brewer <laurence.brewer@nara.gov>

Cc: Margaret Hawkins <margaret.hawkins@nara.gov>, "Stem, GaryM" <garym.stem@nara.gov>

(b) (5)

Thanks
Lisa

LISA R. CLAVELLI
Supervisor, Records Appraisal and Agency Assistance
Office of the Chief Records Officer
301-837-0759



[Quoted text hidden]

Laurence Brewer <laurence.brewer@nara.gov>

Wed, Mar 2, 2016 at 8:29 AM

To: "Clavelli, Lisa" <lisa.clavelli@nara.gov>

Cc: "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Stem, GaryM" <garym.stem@nara.gov>

(b) (5)

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GaryM Stern <garym.stem@nara.gov>

Wed, Mar 2, 2016 at 11:44 AM

To: Laurence Brewer <laurence.brewer@nara.gov>

Cc: "Clavelli, Lisa" <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

I did make it back in one piece, and it was a great little trip.

(b) (5)

Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stem@nara.gov
[Quoted text hidden]

 ResponsetoStateMarch2016.ngc.docx
22K

Laurence Brewer <laurence.brewer@nara.gov>

Fri, Mar 4, 2016 at 10:54 AM

To: GaryM Stern <garym.stem@nara.gov>

Cc: "Clavelli, Lisa" <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Hi everyone, and thanks for your comments and edits! I have added a couple more. I would like to get everyone's concurrence, clean it up and share with David, Deb, Jay before prepping, ideally early next week.

Sound like a plan?

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 ResponsetoStateMarch2016.ngc Inb.docx
21K

Lisa Clavelli <lisa.clavelli@nara.gov>

Fri, Mar 4, 2016 at 11:08 AM

To: Laurence Brewer <laurence.brewer@nara.gov>

Cc: GaryM Stern <garym.stem@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

I like the added language and tone of this revised version.

LISA R. CLAVELLI
Supervisor, Records Appraisal and Agency Assistance

Office of the Chief Records Officer
301-837-0759



[Quoted text hidden]

GaryM Stern <garym.stern@nara.gov> Fri, Mar 4, 2016 at 3:31 PM
To: Lisa Clavelli <lisa.clavelli@nara.gov>
Cc: Laurence Brewer <laurence.brewer@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

I made a few other changes to the last sentence of the third to last paragraph on p.2, per attached.

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

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 ResponsetoStateMarch2016.ngc Inb.gms.docx
24K

Laurence Brewer <laurence.brewer@nara.gov> Fri, Mar 4, 2016 at 3:56 PM
To: GaryM Stern <garym.stern@nara.gov>
Cc: Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Thanks, Gary, looking better. I'll wait til Monday to send up so that others who chose to enjoy their Friday afternoon can review.

[Quoted text hidden]

Hannah Bergman <hannah.bergman@nara.gov> Mon, Mar 7, 2016 at 8:52 AM
To: Laurence Brewer <laurence.brewer@nara.gov>
Cc: GaryM Stern <garym.stern@nara.gov>, Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Hi,

(b) (5)



Hannah

[Quoted text hidden]

Laurence Brewer <laurence.brewer@nara.gov> Mon, Mar 7, 2016 at 8:56 AM
To: Hannah Bergman <hannah.bergman@nara.gov>
Cc: GaryM Stern <garym.stern@nara.gov>, Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

(b) (5)

[Quoted text hidden]

Hannah Bergman <hannah.bergman@nara.gov>
To: Laurence Brewer <laurence.brewer@nara.gov>
Cc: GaryM Stem <garym.stem@nara.gov>, Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Mon, Mar 7, 2016 at 9:02 AM

(b) (5)

Hannah
[Quoted text hidden]

Laurence Brewer <laurence.brewer@nara.gov>
To: Hannah Bergman <hannah.bergman@nara.gov>
Cc: GaryM Stem <garym.stem@nara.gov>, Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Mon, Mar 7, 2016 at 11:10 AM

(b) (5)

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GaryM Stern <garym.stem@nara.gov>
To: Laurence Brewer <laurence.brewer@nara.gov>
Cc: Hannah Bergman <hannah.bergman@nara.gov>, Lisa Clavelli <lisa.clavelli@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Semo, Alina" <alina.semo@nara.gov>

Mon, Mar 7, 2016 at 11:22 AM

(b) (5)

Thanks,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stem@nara.gov

[Quoted text hidden]

DATE

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:

Thank you for your letter of November 6, 2015, providing additional information concerning the emails of former Secretary of State Hillary Clinton. We are encouraged to hear about the progress of the Electronic Records Management Working Group (ERMWG) in updating the Department's email management guidance, including the piloting of the Capstone approach to capturing email messages. We are also pleased to hear that the Foreign Affairs Manual (FAM) (b) (5) [redacted] codifying recordkeeping requirements related to the use of personal or non-official email accounts for official business consistent with the November 2014, amendments to the Federal Records Act (b) (5) [redacted]

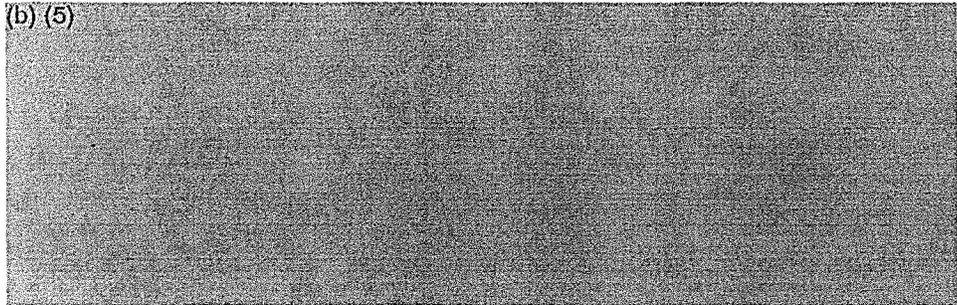
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(b) (5) [redacted]

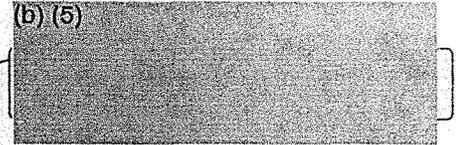
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(b) (5) [redacted]

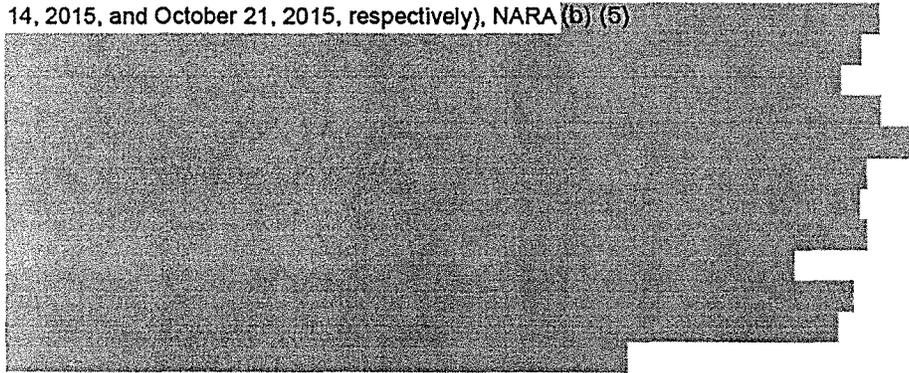
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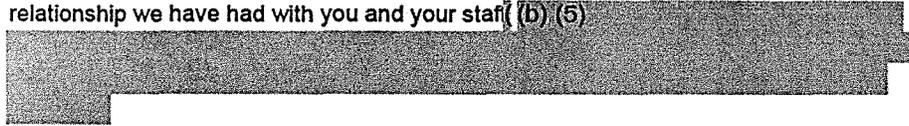
(b) (5)



With regard to the Department's open inquiries with the Federal Bureau of Investigation (FBI) and the representatives of former Secretary Colin Powell (letters dated September 14, 2015, and October 21, 2015, respectively), NARA (b) (5)



We recognize the Department's challenge in addressing the various complex records management issues related to the records of the former Secretaries. It appears that progress has been made and we are looking forward to receiving the reports and other documentation verifying the Department's actions. We appreciate the close working relationship we have had with you and your staff (b) (5)



Thank you for your continued attention to these matters.

Sincerely,

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

DATE

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

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[Redacted]

(b) (5)

[Redacted]

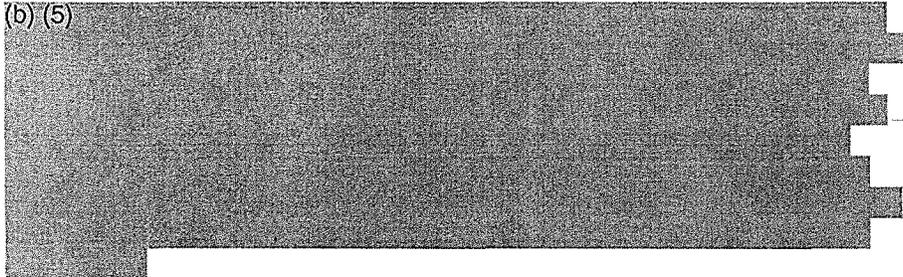
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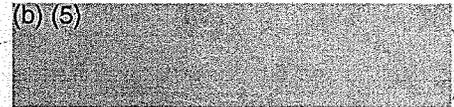
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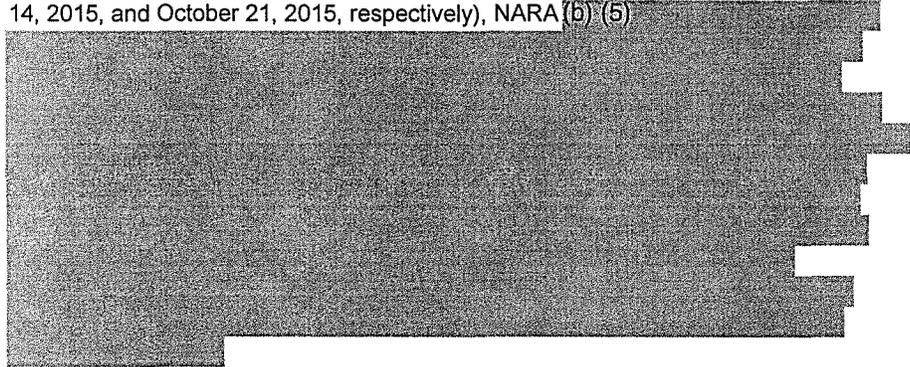
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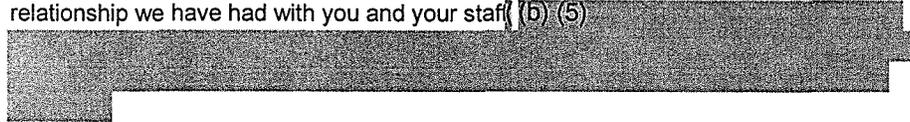
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Sincerely,

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

DATE

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:

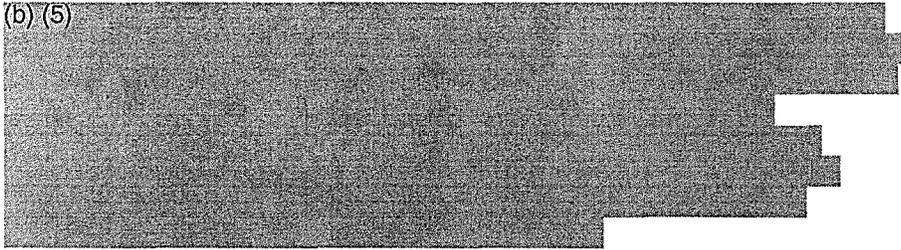
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[redacted]

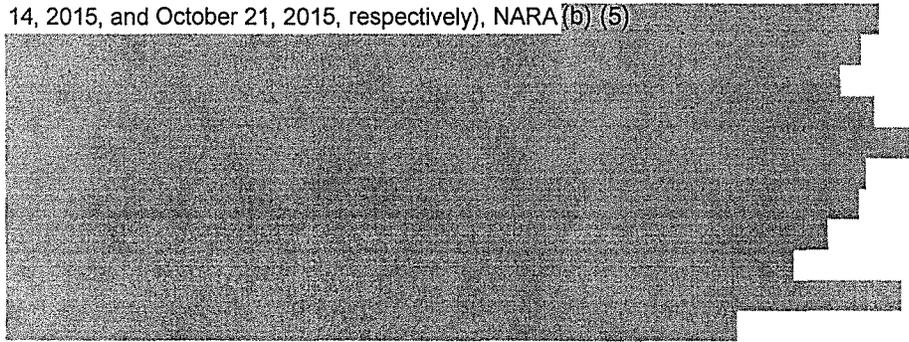
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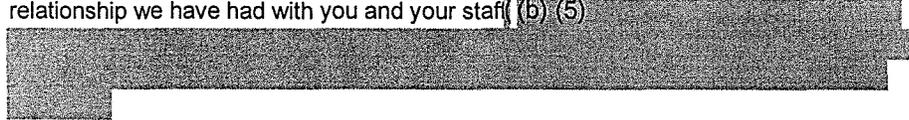
(b) (5)



With regard to the Department's open inquiries with the Federal Bureau of Investigation (FBI) and the representatives of former Secretary Colin Powell (letters dated September 14, 2015, and October 21, 2015, respectively), NARA (b) (5)



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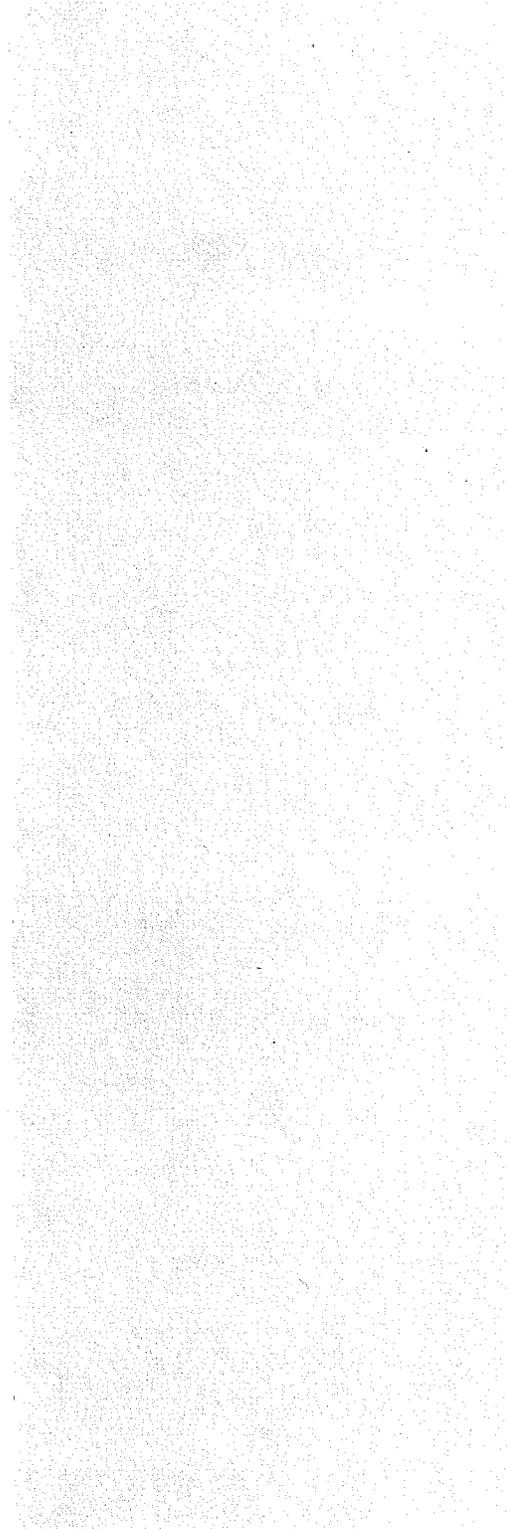


Thank you for your continued attention to these matters.

Sincerely,

LAURENCE BREWER

Acting Chief Records Officer
for the U.S. Government



DATE

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

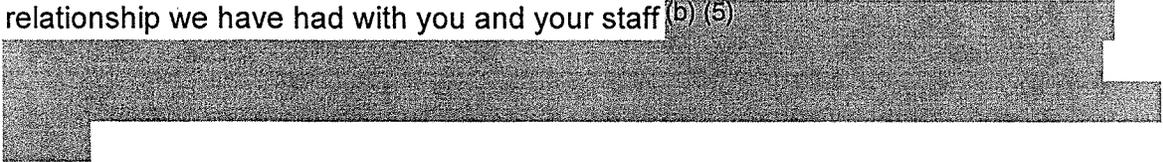
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(b) (5) [REDACTED]

With regard to the Department's open inquiries with the Federal Bureau of Investigation (FBI) and the representatives of former Secretary Colin Powell (letters dated September 14, 2015, and October 21, 2015, respectively), NARA (b) (5) [REDACTED] [REDACTED]

We recognize the Department's challenge in addressing the various complex records management issues related to the records of the former Secretaries. It appears that progress has been made and we are looking forward to receiving the reports and other documentation verifying the Department's actions. We appreciate the close working relationship we have had with you and your staff (b) (5)



Thank you for your continued attention to these matters.

Sincerely,

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

**UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON**

November 6, 2015

Laurence Brewer
Acting Chief Records Officer
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408

Dear Mr. Brewer,

The Department of State has been working these past months with the National Archives and Records Administration (NARA) regarding the emails of former Secretary of State Hillary Clinton. I am writing to provide NARA additional information regarding the Department's efforts, including information relevant to Paul M. Wester, Jr.'s July 2 letter to Margaret P. Grafeld, Deputy Assistant Secretary for Global Information Services.

Mr. Wester inquired as to steps the Department is taking to implement records management directives it issued in 2014 with respect to senior Department officials. As you know, in March of this year, Secretary Kerry asked the Department's Office of Inspector General ("OIG") to review and make recommendations for improving the Department's recordkeeping practices. Although OIG has not yet issued recommendations, Secretary Kerry appointed a Transparency Coordinator in September to work with Department bureaus and offices on improving Department records systems. It is expected that the Transparency Coordinator will be able to build on the work of the OIG as well as on the ongoing efforts of the Department's records management program, which has been instrumental in reminding all Department employees, including senior officials, of their records management responsibilities, including those regarding email.

The Department is reviewing email management options for the Department through an Electronic Records Management Working Group (ERMWG) that was established in order to meet the requirements for email management by December 31, 2016, as mandated by the President's Managing Government Records Directive. Although a long-term solution will be in place by the end of 2016, the

Department is working on several short-term steps to preserve senior officials' email. In February 2015, the Department's Executive Secretariat began journaling the email of 85 senior officials; as of October, the Executive Secretariat was journaling 112 senior officials. This includes the Deputy Secretaries, Under Secretaries, several senior advisers, as well as the Secretary's staff ranging from his chief of staff to staff assistants. The Department is also automatically journaling Secretary Kerry's email. Any email sent or received on Secretary Kerry's state.gov account is automatically copied and remotely saved electronically. In addition to the above listed officials, the Department began journaling the email accounts of Assistant Secretaries, Principal Deputy Assistant Secretaries, and a limited number of other senior officials in October 2015.

The Department updated its email policy in the Foreign Affairs Manual in October reminding employees that personal email accounts should only be used for official work in very limited circumstances and that under the Presidential and Federal Records Act Amendments of 2014, employees are prohibited from creating or sending a record using a non-official email account unless the employee (1) copies the employee's official email account in the original creation or transmission, or (2) forwards a complete copy of the record (including any attachments) to the employee's official email account not later than 20 days after the original creation or transmission. In addition, the Department's Foreign Service Institute (FSI) provides a variety of training courses, both classroom and online, that include records management. These courses include records management training for Office Management Specialists, Information Management Officers, and orientation courses for new employees. FSI also offers a specialized records management course for all levels of employees and training for State Messaging and Archive Retrieval Toolset (SMART) users.

The Secretary's Executive Secretariat regularly hosts record-keeping workshops for all Seventh Floor Department Principals' offices and employees, including five sessions in 2015. Representatives from the Office of Information Programs and Services (A/GIS/IPS) and the Correspondence, Records and Staffing Division of the Executive Secretariat Staff review senior officials' responsibilities for creating records necessary to document their activities and for the proper management and preservation of their records regardless of physical format or media. They also discuss departing senior officials' responsibility to identify their records prior to departure and to take with them only personal papers and non-record materials, subject to review by records officers to ensure compliance with federal records laws and regulations. Adherence to Department email

requirements in accordance with the Presidential and Federal Records Act Amendments of 2014 is also emphasized at these workshops.

The Executive Secretariat also requires a briefing for all incoming and departing employees assigned to Seventh Floor Department Principals' offices on their record keeping requirements and responsibilities. Upon notification of a senior official's departure, the Executive Secretariat Staff briefs and assists each departing Principal's office with the proper preservation of official records.

In his letter, Mr. Wester also requested that the Department contact former Secretary Clinton's representatives to request the native electronic version with the associated metadata of the approximately 55,000 pages of emails provided to the Department. As set forth in the Department's and NARA's September 17 motion to dismiss in the consolidated cases of *Judicial Watch v. Kerry*, No. 1:15-cv-00785-JEB and *Cause of Action Institute v. Kerry*, No. 1:15-cv-01068-JEB, the Department requested on May 22 that former Secretary Clinton provide an electronic copy of the approximately 55,000 pages of emails, and Secretary Clinton's attorney responded that they would do so. The electronic copy was not, however, provided; Secretary Clinton's counsel advised on August 12 that the email server that was used to store Secretary Clinton's emails while she was Secretary of State and the thumb drives that included electronic copies of the documents she had provided to the Department had been turned over to the Federal Bureau of Investigation (FBI). On September 14, 2015, the Department sent a letter to the FBI requesting an electronic copy of the approximately 55,000 pages. We have not yet received such a copy.

Mr. Wester also advised that the Department may want to reach out to both former Secretary Clinton and former Secretary Colin Powell to see if Department emails could be recovered from any internet service and email providers that they used. On October 2, 2015, the Department requested Secretary Clinton's counsel to confirm that "with regard to her tenure as Secretary of State, former Secretary Clinton has provided the Department with all federal records in her possession, regardless of their format or the domain on which they were stored or created, that may not otherwise be preserved in the Department's recordkeeping system. To the extent her emails might be found on any internet service and email providers, we encourage you to contact them." (Attachment A). On October 8, former Secretary Clinton's counsel wrote to:

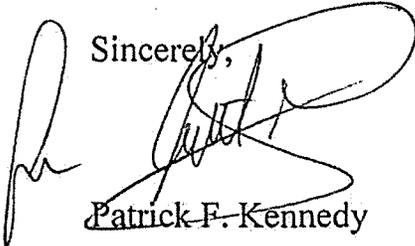
confirm that, with regard to her tenure as Secretary of State, former Secretary Clinton has provided the Department on December 5, 2014, with

all federal e-mail records in her custody, regardless of their format or the domain on which they were stored or created, that may not otherwise be preserved, to our knowledge, in the Department's recordkeeping system. She does not have custody of e-mails sent or received in the first few weeks of her tenure, as she was transitioning to a new address, and we have been unable to obtain these. In the event we do, we will immediately provide the Department with federal record e-mails in this collection. (Attachment B).

On October 21, the Department sent a letter to Secretary Powell's principal assistant similarly encouraging them to check with the internet service or email provider for Secretary Powell's former account to see if it is still possible to retrieve any official emails from his tenure at the Department. (Attachment C). The Department has not as yet received a response.

Finally, please be advised that in letters of March 11, 2015, the Department also requested of former aides to former Secretary Clinton -- Cheryl Mills, Huma Abedin, Jacob Sullivan, and Philippe Reines -- that should any of them be aware or become aware of a federal record in his or her possession, such as an email sent or received on a personal email account while serving in an official capacity at the Department, that such record be made available to the Department. We also advised them of NARA's records management guidance *Bulletin 2013-03* and the additional NARA guidance on managing email issued on September 15, 2014, some or all of which post-dated their service to the Department. The Department has received over one hundred thousand pages of documents from Ms. Mills, Ms. Abedin, Mr. Sullivan, and Mr. Reines collectively, through their representatives in response to the Department's request.

We hope that this information assists in NARA's understanding of this matter. As always, thank you for our continued close collaboration.

Sincerely,

Patrick F. Kennedy

Enclosures

**UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON**

OCT 0 2 2015

Mr. David E. Kendall, Esq
Williams & Connolly LLP
725 12th Street, NW
Washington, DC 20005

Dear Mr. Kendall:

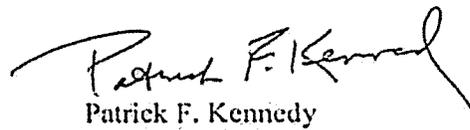
I am writing regarding the Department's request that your client, former Secretary of State Hillary Clinton, provide it with any federal records in her possession, such as an email sent or received on a personal email account while serving as Secretary of State, if there is reason to believe that it may not otherwise be preserved in the Department's recordkeeping system.

On December 5, 2014, former Secretary Clinton produced approximately 55,000 pages of documents in response, spanning from March 18, 2009 to February 1, 2013. The Office of Former Secretary Clinton has previously explained that "Before March 18, 2009, Secretary Clinton continued using the email account she had used during her Senate service" and that "[s]he, however, no longer had access to these emails once she transitioned from this account." In the course of reviewing recently received documents from other former officials, the Department has become aware of emails that were sent to or received from former Secretary Clinton between January and March 2009.

As a result, I ask that you confirm that, with regard to her tenure as Secretary of State, former Secretary Clinton has provided the Department with all federal records in her possession, regardless of their format or the domain on which they were stored or created, that may not otherwise be preserved in the Department's recordkeeping system. To the extent her emails might be found on any internet service and email providers, we encourage you to contact them.

I would appreciate it if you would confirm receipt of this letter and respond to the above request for information in writing at your earliest convenience.

Sincerely,


Patrick F. Kennedy

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

DAVID E. KENDALL
(202) 434-5145
dkendall@wc.com

EDWARD BENNETT WILLIAMS (1920-1986)
PAUL R. CONNOLLY (1922-1978)

October 8, 2015

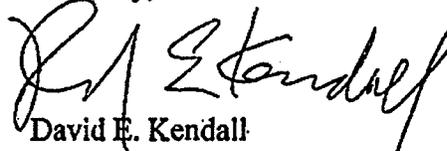
BY EMAIL

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

Dear Mr. Kennedy:

Thank you for your letter dated October 2, 2015. I can confirm that, with regard to her tenure as Secretary of State, former Secretary Clinton has provided the Department on December 5, 2014, with all federal e-mail records in her custody, regardless of their format or the domain on which they were stored or created, that may not otherwise be preserved, to our knowledge, in the Department's recordkeeping system. She does not have custody of e-mails sent or received in the first few weeks of her tenure, as she was transitioning to a new address, and we have been unable to obtain these. In the event we do, we will immediately provide the Department with federal record e-mails in this collection.

Sincerely,



David E. Kendall

DEK/bb

**UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON**

OCT 21 2015

Peggy Cifrino
Principal Assistant to General Colin Powell
Office of General Colin L. Powell, USA (Ret)
909 North Washington Street, Suite 700
Alexandria, Virginia 22314

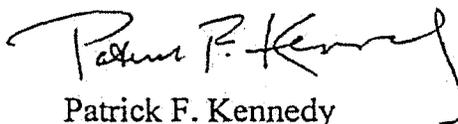
Dear Ms. Cifrino:

I am writing regarding the Department's November 12, 2014 request that former Secretary of State Colin Powell provide it with any federal records in his possession, such as an email sent or received on a personal email account while serving as Secretary of State, if there is reason to believe that it may not otherwise be preserved in the Department's recordkeeping system.

You previously advised, with respect to official emails sent on Secretary Powell's private account during his time in office, that the account he used has been closed for a number of years. Based on advice we have received from the National Archives and Records Administration, the Department would nevertheless encourage you – if you have not already done so – to check with the internet service or email provider for the former account to see if it is still possible to retrieve any official emails from Secretary Powell's tenure at the Department. If you do recover any such emails, we would appreciate your forwarding them to the Department.

Thank you for considering this request.

Sincerely,


Patrick F. Kennedy



Laurence Brewer <laurence.brewer@nara.gov>

Correspondence to State re Clinton Email

Laurence Brewer <laurence.brewer@nara.gov>

Mon, Mar 14, 2016 at 5:10 PM

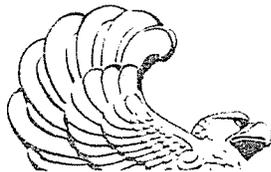
To: "Bosanko, William" <william.bosanko@nara.gov>, "Ferriero, David" <david.ferriero@nara.gov>, "Wall, Debra" <debra.wall@nara.gov>, "Stern, GaryM" <garym.stern@nara.gov>

Good afternoon everyone,

Please find attached the final, signed version of our letter to State, responding to their letter of Nov 6. Thank you all for your comments and edits.

(b) (5)

 2016-03-14_UnauthDisp_StateDept_FY15 Secretary Clinton Email.pdf
791K



NATIONAL
ARCHIVES

March 14, 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:

Thank you for your letter of November 6, 2015, providing additional information concerning the emails of former Secretary of State Hillary Clinton. We are encouraged to hear about the progress of the Electronic Records Management Working Group (ERMWG) in updating the Department's email management guidance, including the piloting of the Capstone approach to capturing email messages. We are also pleased to hear that the Foreign Affairs Manual (FAM) reflects this new guidance, codifying recordkeeping requirements related to the use of personal or non-official email accounts for official business consistent with the November 2014, amendments to the Federal Records Act. We have reviewed this updated guidance at 5 FAM 443.7 *Non-Official Email Accounts*, but found that it may be confusing to employees given that it is placed in the section titled "Electronic Records, Facsimile Records, and Electronic Mail Records" and not referenced in the section titled "Electronic Mail (Email) Policy" at 5 FAM 750. We recommend a review of the various email entries in the FAM for contradictory language and suggest consolidating them to a single entry to minimize confusion.

In your November 6 letter, you noted that the Department's Office of Inspector General (OIG) is in the process of investigating the Department's recordkeeping practices. The OIG has consulted with NARA as it prepares its final OIG report, and we look forward to receiving the report when it is issued. We are also available to review and provide comments to the Department on its Plan of Corrective Action (PoCA) to ensure that it is in line with NARA guidance.

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RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

You also indicated that Secretary Kerry had appointed a Transparency Coordinator to implement the recommendations of both the ERMWG and the OIG. NARA staff met with the Transparency Coordinator and were also briefed by the ERMWG on new policies and tools related to email management. In order to stay apprised of the Department's progress on the various electronic records management activities, we recommend that we schedule regular meetings with the Department's Transparency Coordinator and the Office of Information Programs and Services.

With regard to the Department's open inquiries with the Federal Bureau of Investigation (FBI) and the representatives of former Secretary Colin Powell (letters dated September 14, 2015, and October 21, 2015, respectively), NARA still believes that the Department will need to take additional action to resolve these matters at the appropriate time. To reiterate our previous request of July 2, 2015, please confirm that the Department is following up with the internet service provider of former Secretary Powell with regard to whether it is still possible to retrieve the email records that may still be present on their servers. Once resolved, provide us with the appropriate documentation verifying the return of the records to the Department's custody or the inability of the Department to recover these records. We understand that the Department must wait until the FBI concludes its investigation before taking further action with regard to determining whether any additional email records of Secretary Clinton can be recovered.

We recognize the Department's challenge in addressing the various complex records management issues related to the records of the former Secretaries. It appears that progress has been made and we are looking forward to receiving the reports and other documentation verifying the Department's actions. We appreciate the close working relationship we have had with you and your staff, and we remain ready to work with you to resolve all outstanding issues related to this case.

Thank you for your continued attention to these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laurence Brewer".

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

cc: Margaret P. Grafeld
Deputy Assistant Secretary for Global Information Services, Bureau of Administration,
U.S. Department of State



Laurence Brewer <laurence.brewer@nara.gov>

(Follow up) Reuters: U.S. lawmakers to press AOL for Powell's State Department emails | Reuters

4 messages

Laura Diachenko <laura.diachenko@nara.gov>

Fri, Sep 9, 2016 at 12:13 PM

To: GaryM Stern <garym.stern@nara.gov>, Laurence Brewer <laurence.brewer@nara.gov>

Cc: John Valceanu <john.valceanu@nara.gov>, Miriam Kleiman <miriam.kleiman@nara.gov>, "Ravanbakhsh, Arian" <Arian.Ravanbakhsh@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>

Jonathan checked back to see when he could expect to hear from us today. Could you please let me know?

Here are his outstanding questions:

I'm still very interested to know what State said response to your letter earlier this year. Is NARA now inclined to agree with State that it's inappropriate for State itself to contact AOL?

I am seeing the March 2016 for the letter for the first time now. Was this made public before? I see you repeated your request that State contact Mr. Powell's ISP all the more firmly! Has State responded to this? Today, State told lawmakers decided that the department's lawyers decided against this course of action - did they inform NARA of this?

Thank you all!

Laura (Diachenko) Sheehan

National Archives Public Affairs

direct: 202-357-5032

email: laura.diachenko@nara.gov



On Thu, Sep 8, 2016 at 4:51 PM, Laura Sheehan <laura.diachenko@nara.gov> wrote:

FYI,

This just came out.

Gary/Laurence: Jonathan would still like a response to his follow up questions, please see his message below the link.

(Note that this is a mobile link)

<http://mobile.reuters.com/article/idUSKCN11E2S6>

From Jonathan: Yes, please, and we can always update or write more. I'm still very interested to know what State said response to your letter earlier this year. Is NARA now inclined to agree with State that it's inappropriate for State itself to contact AOL?

Many thanks

J

Laura

On Sep 8, 2016, at 2:15 PM, GaryM Stern <garym.stern@nara.gov> wrote:

I've called and left messages with State lawyers to understand better what P. Kennedy is referring to, so would like to talk to them first before responding to the reporter.

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Thu, Sep 8, 2016 at 2:06 PM, Laura Diachenko <laura.diachenko@nara.gov> wrote:

Please see Jonathan's follow up below. Suggestions?

----- Forwarded message -----

From: <jonathan.allen@thomsonreuters.com>
Date: Thu, Sep 8, 2016 at 1:59 PM
Subject: RE: Reuters / AOL and State
To: laura.diachenko@nara.gov
Cc: miriam.kleiman@nara.gov, john.valceanu@nara.gov

Thanks, Laura, this is very helpful. I found the earlier letters after writing to you - however I am seeing the March 2016 for the letter for the first time now. Was this made public before? I see you repeated your request that State contact Mr. Powell's ISP all the more firmly! Has State responded to this? Today, State told lawmakers decided that the department's lawyers decided against this course of action - did they inform NARA of this?

Thanks
J

Jonathan Allen
Correspondent
Reuters
Thomson Reuters

Office: 646-223-5371
Mobile/Signal: 646-369-0432
PGP fingerprint: D0A0 7AA5 15BF 2043 5A06 E4AD 4BDC 3D32 A147 913D
Full key: <https://tr.im/jgS9h>

jonathan.allen@reuters.com

Laura (Diachenko) Sheehan
National Archives Public Affairs
direct: 202-357-5032
email: laura.diachenko@nara.gov



On Thu, Sep 8, 2016 at 12:40 PM, Laurence Brewer <laurence.brewer@nara.gov> wrote:
| John, Laura & Miriam,

The link below is to our statement that attaches the first letters between NARA and State in March and April of 2015.

<https://www.archives.gov/press/press-releases/2015/nr15-65.html>

The correspondence that specifically includes our request that State contact the service providers of the former Secretaries is attached (letters dated July 2 and March 14).

The State letter of Nov 6 includes State's reply that they made the request of the representatives of the former Secretaries.

I could not locate the later letters online; they are attached here.

L.

On Thu, Sep 8, 2016 at 12:19 PM, GaryM Stern <garym.stern@nara.gov> wrote:

We can share all of the correspondence between us and State, which includes our request that State should contact Powell's email service provider to try to recover his emails. State has not responded to that query, so it is new news to us that "State's lawyers apparently decided against doing this."

Laurence and his staff will provide you links or pdf copies of that correspondence that you can share with the reporter.

Thanks,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Thu, Sep 8, 2016 at 11:37 AM, Laura Diachenko <laura.diachenko@nara.gov> wrote:

All:

Please see Jonathan Allen's inquiry below. Is there anything we can share with him?

Thank you in advance for your assistance!

Sincerely,

Laura (Diachenko) Sheehan
National Archives Public Affairs
direct: 202-357-5032
email: laura.diachenko@nara.gov





----- Forwarded message -----

From: <jonathan.allen@thomsonreuters.com>
Date: Thu, Sep 8, 2016 at 11:24 AM
Subject: Reuters / AOL and State
To: laura.diachenko@nara.gov
Cc: miriam.kleiman@nara.gov

Hi Laura and Miriam

A little episode involving NARA is being discussed at a hearing today involving Patrick Kennedy and other State officials before the House Oversight Committee. It seems that at some point (in 2015?) that NARA wrote to State urging State to *directly* contact AOL to recover any federal records that may be held by AOL from Mr. Powell's era. State's lawyers apparently decided against doing this, per Mr. Kennedy. Is this accurate, and can you share any more information about this exchange? Do you have the letters back and forth to share?

Thanks

J

Jonathan Allen
Correspondent
Reuters
Thomson Reuters

Office: 646-223-5371
Mobile/Signal: 646-369-0432
PGP fingerprint: D0A0 7AA5 15BF 2043 5A06 E4AD 4BDC 3D32 A147 913D
Full key: <https://tr.im/jgS9h>

jonathan.allen@reuters.com

From: Laura Diachenko [laura.diachenko@nara.gov]
Sent: Monday, March 28, 2016 12:38 PM
To: Allen, Jonathan (Reuters News)
Subject: out of office-returning Monday, April 4 RE: Reuters / State Department OPFs

I am currently out of the office and will not be checking emails.

If you need to contact someone in Public Affairs during my absence:

- On Friday, March 25 and Friday, April 1, contact John Volceanu, Director, Communications and Marketing, at 202-357-5238, or via email: john.valceanu@nara.gov
- On Monday, March 28 through please email my colleague, Miriam Kleiman, at miriam.kleiman@nara.gov, or call her directly at: 202-357-5326.
- Or call our general National Archives Public Affairs line at 202-357-5300.

Thank you!

Laura (Diachenko) Sheehan
National Archives Public Affairs Staff

--
Laura (Diachenko) Sheehan
National Archives Public Affairs
direct: 202-357-5032
email: laura.diachenko@nara.gov



--
Laurence Brewer, CRM
Chief Records Officer for the U.S. Government
National Archives and Records Administration
Laurence.Brewer@nara.gov
Office: (301) 837-1539
Cell: (301) 974-4582

GaryM Stern <garym.stern@nara.gov>

Fri, Sep 9, 2016 at 12:18 PM

To: Laura Diachenko <laura.diachenko@nara.gov>

Cc: Laurence Brewer <laurence.brewer@nara.gov>, John Valceanu <john.valceanu@nara.gov>, Miriam Kleiman <miriam.kleiman@nara.gov>, "Ravanbakhsh, Arian" <Arian.Ravanbakhsh@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>

You can tell him that the March 2016 letter was released publicly under the FOIA, but has not yet been put up on our website. You can also tell him that we have not received a response from State to that letter, and therefore cannot comment further on it.

For internal information only, per an initial conversation with State counsel, it's not clear that State has formally determined not to take further action.

Thanks,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

[Quoted text hidden]

Laurence Brewer <laurence.brewer@nara.gov>

Fri, Sep 9, 2016 at 12:22 PM

To: GaryM Stern <garym.stern@nara.gov>

Cc: Laura Diachenko <laura.diachenko@nara.gov>, John Valceanu <john.valceanu@nara.gov>, Miriam Kleiman <miriam.kleiman@nara.gov>, "Ravanbakhsh, Arian" <Arian.Ravanbakhsh@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>

Bcc: "Clavelli, Lisa" <lisa.clavelli@nara.gov>

And to add (for internal information only), we will be working on drafting a formal letter to State that I expect will be sent early next week requesting a formal response on the Powell/ISP issue and other outstanding items raised in the March 2016 letter.

[Quoted text hidden]

Laura Diachenko <laura.diachenko@nara.gov>

Fri, Sep 9, 2016 at 1:00 PM

To: Laurence Brewer <laurence.brewer@nara.gov>

Cc: GaryM Stern <garym.stern@nara.gov>, John Valceanu <john.valceanu@nara.gov>, Miriam Kleiman <miriam.kleiman@nara.gov>, "Ravanbakhsh, Arian" <Arian.Ravanbakhsh@nara.gov>, "Hawkins, Margaret" <margaret.hawkins@nara.gov>

OK, thank you both!

Laura (Diachenko) Sheehan

National Archives Public Affairs

direct: 202-357-5032

email: laura.diachenko@nara.gov



[Quoted text hidden]



Laurence Brewer <laurence.brewer@nara.gov>

DRAFT Letter to State

Laurence Brewer <laurence.brewer@nara.gov>

Thu, Sep 15, 2016 at 8:43 AM

To: "Ferriero, David" <david.ferriero@nara.gov>, "Wall, Debra" <debra.wall@nara.gov>, John Hamilton <john.hamilton@nara.gov>, "Stern, GaryM" <garym.stern@nara.gov>, "Trainer, Jay" <jay.trainer@nara.gov>, "Bosanko, William" <william.bosanko@nara.gov>, John Valceanu <john.valceanu@nara.gov>

Bcc: "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Clavelli, Lisa" <lisa.clavelli@nara.gov>

Good morning all,

Attached for your review is a draft letter to State following up on our last letter from March 2016, and inquiring specifically about the Colin Powell email issue raised in the House hearing. A transcript is also attached of Patrick Kennedy's testimony.

The goal is to get this mailed ASAP, ideally this afternoon. Appreciate your comments.

Thanks,
L.

2 attachments

 2016-09-12_UnauthDisp_State_ClintonEmail.docx
14K

 House Oversight and Government Reform Committee - Hearing.rtf
395K

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 Bill Fischer on assisting in the review of non-record personal emails that may be part of this collection.

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
United States Department of State
D-MR, Room 1464
2201 C Street, N.W.
Washington, DC 20520-6421

Administrative Details

(b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

NewsRoom

9/8/16 Fed. News Serv. Transcripts (Pg. Unavail. Online)
2016 WLNR 27526906

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September 8, 2016

House Oversight and Government Reform Committee - Hearing

Subject: State Department FOIA Compliance Witnesses: Undersecretary of State for Management Patrick F. Kennedy; Janice Jacobs, transparency coordinator at the State Department; Karin Lang, director of the State Department's executive secretariat; and Clarence Finney Jr., deputy director of the State Department Executive Secretariat's Correspondence, Records, and Staffing Division, testify Location: 2154 Rayburn House Office Building Time: 10:00:00 Date: 2016-09-08

CHAFFETZ: Committee on Oversight and Government Reform will come to order and without objection the Chair is authorized to declare a recess at any time.

A very important hearing today because you know, the Committee has jurisdiction. We have jurisdiction on federal records, we have jurisdiction on the Freedom of Information Act, have the jurisdiction on the National Archives. So, a very important part of our process. We're unique in our nation. We are open we are transparent. We do provide access to the American people for what they paid for.

As you also know, Secretary Clinton served as the Secretary of State from early 2009 through early 2013. But here is the problem, since 2009, there have been thousands of congressional inquiries, thousands of FOIA requests, subpoenas, media inquiries and if any of those required Secretary Clinton's federal records, i.e. her emails, there was not a way for those requests to be fulfilled.

This has created a mess and a disaster for the people on the frontline and we have to deal with this and we're thankful for the four people that served -- the United States, they served in the State Department, we appreciate them being on this panel and having to deal with this mess. That Hillary Clinton conveniently created for the State Department on her way out the door.

Remember when she left in early 2013, it wasn't until December 5, of 2014 closing in on two years later that Secretary Clinton returns 55,000 pages in hard copy format to the State Department.

Six May -- roughly six months later, this prompted Ambassador Kennedy to ask for the electronic copies of these records, but later the FBI swooped in because they had been given in by the Inspector General, the Inspector General had highlighted that there was classified information residing in a non-classified situation with people who did not have the proper security clearance.

The Inspector General found this. They did what they were supposed to do. They contacted the FBI. The FBI swoops in and they find thousands and thousands of additional emails, many of which were classified. Most were not. Most were unclassified.

But they nevertheless found federal records not just her emails, federal records and it's important to note that -- the severity of this because the classification ranges everything from confidential to secret, top secret. You even have special access programs that required a code word access. This information was found in there. I'm sure there will be discussion about how

few they were but there is a reason in this nation why we go to such great lengths to classify this information to make sure that the adversary's do not have access to it.

To address this nightmare, the State Department had allocated roughly in 2008, \$12.6 million to fulfill the FOIA request. That is now soared to \$33 million that the State Department is having use. Unfortunately, they are using millions of dollars in lawsuits. Now, keep in mind what the State Department, they are printing, they are using this taxpayer money to make sure that this information never gets out to the public. The public paid for this information. They have access to this information, and the federal government is suing to make sure that they don't get that.

Now unfortunately, the State Department keeps losing these lawsuits. That's why we start to get and we have this revealed. Congressional inquiries sometimes are feckless because State and others, and it's not just the State Department, I want to will be fair. But State Department is one of the worst, from my vantage point in terms of providing documentation that we asked for and congressional inquiries. It's very frustrating.

And now, we're starting to realize why this information is so incomplete because even the State Department themselves didn't have Hillary Clinton's federal records during the four years that she served and here we are in 2016 still trying to untangle this mess and these people have to deal with this.

You have people like the Judicial Watch and the Associated Press and others, we shouldn't have to go to court and sue in order to get access to information that should be readily available.

Under the Freedom of Information Act, you're supposed to have a response within 20 days. But look at the case of the Associated Press, the Associated Press I believe was 2010 just asked for a simple thing, show us Hillary Clinton's calendars. Her calendars.

They wait years for a response. They get a trickling of a little bit. They finally go to court and even with the court, State Department is saying we can't produce these. Are you kidding me? Her calendars.

I'd like to see Hillary Clinton's calendars. You're telling me you can't produce those? What is going on? So we have a duty. We have an obligation. Hillary Clinton created this mess. Hillary Clinton set up this convenient arrangement with herself. Hillary Clinton picked this timeline. I know people are going to say, oh, your -- it's the political season. I just got this information from the FBI. We are days, legislative days after this has happened.

I flew in to go see and read the documents downstairs and I tell you, we're going to move in rapid pace, no matter the political calendar and we would be derelict in our duty if we didn't do it. That's what we do in the oversight committee. It was founded in 1814. That's what we do. We oversee what happens in the executive branch.

I do appreciate the four people that are here today. They have served this country, and served honorably. We appreciate their service to their country. You've been left the mess. We're trying to untangle it. All we ask that you do is share with us the truth, and perspective as you see it and that's what we're seeking. No matter what it is, we just want to get to the truth.

So, let's recognize the Ranking Member, Mr. Cummings for his opening statement.

CUMMINGS: Thank you very much, Mr. Chairman. I want to make sure Mr. Kennedy and witnesses, that as we address this mess and as we address this disaster as the Chairman has described in. And as we enter this hearing entitled, Examining FOIA Compliance at the Department of State, that we make sure that we look at the entire problem.

I want to know how far back it goes. And if we are about the integrity of this committee and truly addressing for your compliance, I hope we'll take a look and see what happened even before Hillary Clinton and what happened afterwards. Integrity of the committee. Integrity of what we are supposed to be about. Integrity of using the taxpayer's dollars wisely so that we might be effective and efficient in what we do.

I wish I have to say that I support today's hearing but I think everyone in this room knows what is really going on here. This hearing is not about an effort to improve FOIA or the federal record keeping. This is an attack. An attack when Hillary

Clinton's candidacy for President of the United States of America. And just the latest in a series of attacks.

The Republicans started with their discredited Benghazi investigation accusing Secretary Clinton of all kinds of unsubstantiated conspiracies. When they turned up nothing, they just made up new accusations against her.

Then, when the FBI Director, Mr. Comey said in that very seat, in that witness chair and debunk those allegations. The Republicans responded by attacking the FBI Director and then making up more accusations against Secretary Clinton.

When Mr. Comey came before us I told him that unfortunately, one time he was the darling of the Republican Party now, he was being placed on trial. Jim has sent a perjury referral to the Justice Department that is ludicrous on its face.

Then, he sent another referral accusing Secretary Clinton of obstructing justice. These actions had their desired effect. They kept repeating the headline that Hillary Clinton is under investigation.

Over the next five days, this committee will hold three hearings focus directly on Hillary Clinton. One today, one Monday and one Tuesday. This frantic pre-election fever is an egregious abuse of taxpayer dollars for political purposes. Today, this hearing is supposed to be, supposed to be focused on a report issued by the State Department Inspector General that highlighted long-standing challenges, long-standing challenges before you across five different secretaries of state.

Yet, the Republicans splashed only one picture across the advisory they sent to the press. A picture of Secretary Clinton. The idea identified FOIA challenges under Secretaries Albright, **Powell**, Rice, Clinton and Kerry but the Republican memo for today focus only on one. You guessed it, Secretary Clinton.

Last night, we obtained an email in which Secretary **Powell** back in 2009 provided advice to Secretary Clinton on how to skirt security rules and bypass requirements to reserve federal records. Although Secretary Clinton has made clear that she did not rely on this advice.

In this email Secretary **Powell** appears to admit that he did it, did this himself. He also says that he disregarded security warnings and use his personal mobile device inside the State Department's secure space.

Now, let me make it very clear, Secretary **Powell** is a man I admire greatly and I have tremendous respect for Secretary **Powell** and his decades of service to our nation despite the poor judgment shown in this email. CUMMINGS: However, whether (ph) in responding like Republicans have done by making a series of frivolous criminal referrals just to generate headlines to help Donald Trump, our goal as a committee should be to ensure that the historical record is complete not limited to Secretary Clinton but the other secretaries, Albright, **Powell**, Kerry, Rice.

Secretary **Powell** used his personal email account for work. Sent emails from non-governmental servers at AOL and did not preserve these records. Yet, the Republican memo focuses only on the period between 2009 and 2013 when Hillary Clinton was Secretary.

This memo says the department and I quote, "loss and untold number of federal records due to inappropriate record-keeping practices by Secretary Hillary Clinton and her senior staff," end of quote. Yet, Secretary Clinton produced some 55,000 pages of emails while Secretary **Powell** has produced none.

We truly are concerned with preserving the entire historical record. Why hasn't the committee sent a letter asking AOL to see if any of Secretary **Powell's** emails are recoverable. The IG also reported that Secretary **Powell** sent classified information from his AOL account, yet the committee has never asked AOL to scan its systems, sequester national security information or identify employees who may have had access to that information.

On this final issue, classification I do believe our committee could play a constructive, a very constructive role and I want you to shed light on this, Mr. Kennedy but only if we do it in a bipartisan way. This whole idea of classification, as part of our review, so far we have seen all kinds of ridiculous outcomes. We've seen agencies disagree on classification decisions.

We've seen one agency say a document is classified and another agency, say a document is not classified. We've seen

unclassified documents suddenly become retroactively classified. We've seen documents with classification markings that were completely wrong. And we've seen documents that are explicitly marked unclassified become classified after the fact.

I do not know how anyone can decipher this broken system. And there is no independent arbiter within the executive branch to handle these kinds of issues. This is exactly the type of cross agency issue that our committee was intended to address.

And I hope we can do so together in a bipartisan way. Are we going to find ourselves in these predicaments again and again and again where one agency says that's classified and the other one says, it's not. Retroactive today, it wasn't before.

In some kind of way, we need to address that Mr. Kennedy you've been around long enough but hopefully you and the others here can set shed light as to how we as a government oversight committee after all, we oversee State and Intelligence and others try to figure out how we can make sure that we avoid those classes in the future.

With that Mr. Chairman, I thank you and I yield back.

CHAFFETZ: Thank you gentleman. We hold the record open for five legislative days for any members who like to submit a written statement. We'll now recognize our witnesses.

We're pleased to welcome the Honorable Patrick F. Kennedy, Undersecretary for Management at the United States Department of State. It is proper to address him I believe as ambassador and apologies that your nameplates doesn't say that but it should. The Honorable Janice Jacobs is the Transparency Coordinator at the United States Department of State. Ambassador, we thank you for being here as well.

Ms. Karin Lang is the Director of the Executive Secretariat the United States Department of State. And Mr. Clarence Finney, Jr., Deputy Director for Correspondence Records and Staffing Division of the Executive Secretariat at the United States Department of State, we welcome you here as well. And thank you, I believe you've been in this role since 2006, correct?

We welcome you all and thank you for being here. Pursuant to committee rules, all witnesses are to be sworn before they testify. So if you please rise and raise your right hand. Thank you.

Do you solemnly swear or affirm that the testimony about to give will be the truth, the whole truth, and nothing but the truth. Thank you.

I will let the record reflect that all witnesses answered in the affirmative but it's my understanding that you are all representatives from the Department of State that rather than giving individual statements that Ambassador Kennedy will give one statement. We're very generous with our time here Ambassador, so please feel free, the time is yours.

KENNEDY: Thank you very much. Chairman Jacobs, Ranking Member Cummings, committee members, good morning. Thank you for your invitation and your interest in FOIA. I appreciate the opportunity to discuss the State Department's ongoing efforts to improve our FOIA process. I'm joined today by my colleagues, Ambassador Janice Jacobs, Director Karin Lang, and Deputy Director Clarence Finney.

Ambassador Jacobs return to the State Department in 2015 to serve as the Secretary's Transparency Coordinator. Karin Lang, is the Director of the Executive Secretariat Staff and among many responsibilities, she is responsible for coordinating the executive secretary's response to FOIA request. And Clarence Finney is one of Ms. Lang's deputies particular responsible for FOIA matters.

The State Department is committed to openness and to encouraging public interest in U.S. foreign policy. Two important efforts underscore our commitment to openness. First, our efforts to preserve a complete record of U.S. foreign policy under the Federal Records Act. And second, our efforts to ensure the American public can gain access to that record using the Freedom of Information Act.

It is clear to the committee, to us and to anyone reading the news that the State Department struggles with the volume of FOIA material. Since fiscal year 2008, our new FOIA request have risen 300 percent from 6,000 to over 24,000 requests per

year. We face a bit FOIA backlog approximately of 30,000 requests, 17 direct request to the State Department and about 13,000 referrals from other agencies to the State Department that need our response or contribution as well.

I want to make clear that this backlog is not acceptable and we are working to reduce it. The rate of incoming cases is increasing and many of these cases are increasingly complex. It is our experience that requesters come first to the State Department to request information in any and all national security issues. These requests are often a mixture of complex subject matters including terrorism, armed conflict, foreign government relations, security and diplomacy.

These complex requests require multiple searches throughout the State Department, and throughout often any of our 275 embassies mission and consulates around the globe, often involving the review of highly classified or highly sensitive material as well as in-depth coordination with other federal agencies.

The most common complaint we received from the public is delays in receiving timely responses. Our goal is to do everything we can to complete each request as quickly as possible with as much response and information as we can and our FOIA staff works diligently to make this happen.

To address these challenges, the department has undertaken a number of steps recently to improve records management, including our response to FOIA requests. We are working closely with the national archives and records administration. Secretary Kerry has focused attention on FOIA and asked the Inspector General to review these issues. And we have directed more resources towards FOIA processing. Working with NARA we have insured that we are capturing records appropriately.

In 2014 the State Department adopted the NARA approved capstone approach to preserving emails which captures all senior emails and we started that in 2015. This program has been expanded to over 688 senior State Department officials, including Secretary Kerry and we will deploy a tool to search these captured materials by the end of this calendar year.

The increased use of email, however, strains our dec -- decades- old records management systems but we are on schedule with the additional resources we have deployed and through the assistance of all the work investor, Jacobs has done to meet NARA's December 2016 deadline to be able to manage our email records electronically.

Efforts by Secretary Kerry.

Early this year, the secretary send a department wide notice reminding employees about the FOIA responsibilities and the need for transparency. We are training and enhance ways our employees on records preservation in order to focus a dedicated high-level review on these issues. Last September, the secretary appointed Ambassador Janice Jacobs as I have mentioned as our transparency coordinator.

She has focused solely on records management improvements including FOIA processing by moving from a 20th century paper-based system to a modern electronic system. Ambassador Jacobs can in response to any of your questions, describe her efforts to identify procedural, bureaucratic and technological solutions.

The Inspector General's review.

Last year Secretary Kerry asked the State Department's Inspector General to explore those issues. The State Department, IG has issued for reports with recommendations where improve records management, including FOIA and all of the OIG's recommendations are resolved and we have implemented the majority of them. The others are still in process because of time and resource constraints.

In January 2016, the only OIG found weaknesses in the FOIA processing by the executive Secretariat which the executive Secretariat has acknowledged. Improvements have been made so far, including establishing written procedures for FOIA searches, including emails, increase training better oversight by senior staff and the establishment of metrics. The Inspector General's May 2016 report concerning email practices of five secretaries of state in shortcomings in how emails were preserved in the past.

It is clear that the department should have done a better job in preserving emails the Secretary of State and their senior staff

going back several administrations. The department is much better situated today than during the historical periods reviewed by the OIG.

By early 2015, we have already taken a number of important steps. For instance, as noted NARA and the IG both agree that past preservation problems of Secretary Clinton and her immediate staff were mitigated by the production of emails to the department. We then worked diligently from May 2015 to February 2016 to release more than 52,000 pages of former Secretary Clinton's emails.

These emails are now part of the Department's permanent records and are available on our FOIA website for the public to see. We recently reviewed -- received additional Clinton emails from the Federal Bureau of Investigation, which we have begun processing. And as noted State is automatically archiving Secretary Kerry's emails to the NARA approved capstone program along with 687 other senior officials.

Increase resources for the FOIA office. The department has reallocated and re-programmed from \$18 million in 2014 to \$26.2 million in 2015 and 32.5 million dollars this year. Over the past year, the FOIA office has added 25 additional full-time positions and converted another 25 positions from part-time to full-time. This comes at a time when the department's operation -- operational funding has increased 25 percent in constant dollar terms over the last five years. We're taking it out of hide (ph).

While we have not had a dedicated FOIA requester service team to answer questions about specific statics requests a new FOIA public liaison office are joined the State Department in May to enhance our ability to be responsive to the American public.

Have these steps made a difference?

Yes, we are beginning to see results. In fiscal 2014, we achieved a 23 percent reduction in our appeals backlog by streamlining our case processing. In fiscal year 2015, the Department close nine of our 10 of its oldest FOIA requests.

Later this year, we plan to start posting nearly all of the documents released through FOIA no matter who the requester was on our public website. This will result in more material on broader ranges of topics, potentially reducing the need for anyone to file a new request for information that is in fact already been reviewed.

The Department is committed to finding more ways to streamline the FOIA process and to reduce our backlog. We look forward to exploring this issue with you today.

Mr. Chairman, that concludes my statement. I have a written statement that I would ask to be included in the record.

CHAFFETZ: Absolutely.

KENNEDY: And I and my colleagues are open here and the committee's questions. Thank you, sir.

CHAFFETZ: Right. Thank you. I now recognize myself. Let me address to Secretary **Powell** issue. Here are some important differences. First of all, the Inspector General who we rely on heavily was able to go back and speak with the former secretaries of State, except Hillary Clinton who refused to be engaged with the Inspector General.

In Secretary Clinton's cases, it's the only case that I'm aware of where there is been an accusation of a destruction of documents that were under subpoena.

Mr. Comey, the FBI Director came and testified before this committee that they didn't look at any of the commit -- of the comments that Secretary Clinton gave under oath, and I would also point back to the January letter of this year where we asked the State Department to look back 15 years not just point -- picking on one but 15 years, which is a long, I think exceptionally long time, but looking back and certainly emails have changed. CHAFFETZ: And finally I would just suggest that I think there are legitimate concerns about retroactive classifications over redactions, those types of things, and I'm pleased to report to the committee because I think Mr. Cummings has some legitimate concerns that we're going to get a

chance to question those people on Monday. That's why we're doing the hearing.

It is an embarrassment that the unclassified, unclassified documents that are residing in the SCIF, unclassified, are only able to be reviewed by members of this committee, the appropriations and judicial committee. If you reside in another committee and/or a member of Congress, you are prohibited by this administration from looking at unclassified documents. I do not know how to explain that. And I think it's absolutely wrong.

Mr. Finney, you are on the front lines. I know the management team at the State Department didn't want you to be here because we had issued a subpoena to be here and I don't take that as you in your personal capacity making that decision. But nevertheless, we're glad that you are here.

You have been in this position since 2006. You didn't ask for this. I'm very sympathetic to the idea -- you haven't testified before Congress. All I ask you to do is just be truthful, tell us the way you saw it, what happened and we will do everything we can to make sure that you get your story and your version of what happened out there.

When did you first know that there was a problem? Please go ahead and move this microphone up close and -- there you go.

FINNEY: First of all, sir, I want to thank you for giving me the opportunity to come forward. I have always wanted to speak the truth at this particular situation and the conference orders (ph)...

(CROSSTALK)

CHAFFETZ: Sure. Sure. So, go ahead. When did you first know there's a problem?

FINNEY: I noticed the problem as far as with the records?

CHAFFETZ: Yes, it was Secretary Clinton. Yes. In our records.

FINNEY: The first time I noticed the problem, when you look at that, is basically when we noted that we have received some documents. There was initially a letter that went out and once we start receiving documents from Secretary Clinton, that's when we realized...

CHAFFETZ: When was that?

FINNEY: I can't tell you the specific date...

CHAFFETZ: Yes, I mean, I don't expect to get the exact day of the week, but roughly, when was that?

FINNEY: I couldn't tell you the exact time. I just know that when we had actually started receiving the actual documents...

CHAFFETZ: Was that after she had left?

FINNEY: Yes, sir.

CHAFFETZ: Did you raise any concerns prior to that? Any questions about did she have a .gov account? Ms. Lang evidently said in a deposition that you did, you raise concerns.

FINNEY: Yes, sir. The concern was and basically what -- when she came on board, you know. They asked the question, will she have a state.gov account? And I was told she would not.

And also, that was something that was not uncommon because the secretary prior to her did not have a state.gov account. And also the secretary prior to that to that previous secretary did not have state.gov...

CHAFFETZ: So the fact that you weren't getting any records from Hillary Clinton, did you ever raise that question, that

concern? Were you told to -- what did they tell you to say or not say about that?

FINNEY: No one told me anything to say or not say. Again, because she didn't have a state.gov account, that was something that was not abnormal because previous secretaries did not have a state.gov accounts. The records that we were receiving were placed into our repository which is the secretary tracking (inaudible) system.

CHAFFETZ: But you got the Secretary Clinton dump of 55,000 pages, almost 2 years after she left. Correct?

FINNEY: Say that not knowing the exact time frame, sir. I will just say that yes we did receive...

CHAFFETZ: OK. I believe that was December 5, 2014 when Mrs. Clinton, Secretary Clinton returned 55,000 pages of emails. Has the -- has the State Department, after December 5, 2014, has the department received any additional Hillary Clinton work emails that were federal records?

FINNEY: After the 55,000 is that what you're saying specifically?

CHAFFETZ: Yes.

FINNEY: Recently, my office was involved in some records that it just recently received. But in that particular case, on purpose that I was involved with, was really just looking at the records thing if they were personal or work-related. And that was the reason why we got involved in that process because the department was receiving so many records and the staffing was lacking (ph).

CHAFFETZ: So, Ms. Lang, how many records did the State Department receive after December 5, 2014?

LANG: I'm sorry, can you be more specific? Are you talking about from Secretary Clinton, from other former employees?

CHAFFETZ: No, I'm talking specifically about Hillary Clinton work emails that were federal records. How many did you get after December 5?

LANG: The Federal Bureau of Investigation has transferred a number of documents to the State Department.

(CROSSTALK)

CHAFFETZ: And what is that number? Do you know the number?

LANG: Those are still undergoing a records review.

CHAFFETZ: Was that 17,448?

LANG: My office in the Executive Secretariat Staff is not leading that effort. I will...

(CROSSTALK)

CHAFFETZ: So, who is? Who knows this number? Ambassador Kennedy?

KENNEDY: Mr. Chairman, to the -- to the -- we received a number of disk from the FBI. We are in the process of inputting them into our classified analysis system and counting them. And we know of 14,900 odd documents and the FBI has mentioned that there could be tens of thousands others in the string of this that we're processing now.

CHAFFETZ: And all of those came after December 5, 2014?

KENNEDY: All of those, Mr. Chairman, were received within the last month.

CHAFFETZ: Ambassador Kennedy, on May 22, 2015, you asked as the representative of the State Department, you asked Secretary Clinton's Attorney, David Kendall, for an electronic copy of the 55,000 pages of emails. When did Secretary Clinton provide the electronic copy to you?

KENNEDY: Intervening in that thing, Mr. Chairman. The FBI then took possession of all the electronic material that Mr. Kendall had to the best of my knowledge.

CHAFFETZ: So did Secretary Clinton fulfill your request to return the federal records via electronic format?

KENNEDY: The -- Secretary Clinton's Attorney, to the best of my knowledge, provided that electronic material to the FBI.

CHAFFETZ: Or it was seized, one of the two. But I'm asking, you met -- it's kind of embarrassing that you had to ask them to return in an electronic format. They went and printed all this stuff out, give you hard copy. So, did they ever give you an electronic copy per your request?

KENNEDY: To the best of my understanding, Mr. Chairman, they do know -- they no longer have an electronic copy because it's in the possession of the FBI.

CHAFFETZ: It was seized, right? Yes. So -- and you have since asked the FBI to turn over that?

KENNEDY: We have -- we have asked the FBI to provide us with any material that they have in their possession that may be federal records. As I mentioned a moment ago, Mr. Chairman, they have provided us with a number of disk, we are loading that system -- those disk into our electronic system. So then we -- that we can first of all, disaggregate the time periods because there are potentially records there prior to when she was Secretary of State and after when she was Secretary of State.

Secondly, because this is their recoveries from her service. There could be material in there which are federal records and material which are not federal records. So we have to disaggregate those. And then we will process all of the federal records as we would do for any federal record.

CHAFFETZ: So, what number are you up to now? Do you know?

KENNEDY: As I said we are -- right now we're up to 14,900 documents that we are reviewing in both the two stages of disaggregation first.

CHAFFETZ: OK. Last question, I've exceeded my time. But, how do I get Hillary Clinton's calendars? Why does that take so long? The original FOIA request came in 2010 and you're arguing in court that you still can't get it done by the end of the year. Judges had to intervene to force you to produce calendars. How difficult is a calendar? Who's in charge of that by the way?

KENNEDY: Mr. Chairman, when we have 30,000 FOIA requests pending, we also have requirements under statute to do what is called historical declassification in which we had not moved 26 million pages in the last five years.

CHAFFETZ: OK. Wait. All I'm trying to talking about is Hillary Clinton's emails -- or Hillary Clinton's calendars. I would like to see as chairman of the Oversight Committee, I would like to see Hillary Clinton's calendars. When can you provide that to me?

KENNEDY: I will -- I will find the time and get back. I will find when that is and get back to you. We...

CHAFFETZ: When will you get back to me by? The end of -- by Tuesday?

KENNEDY: By Tuesday, I can give you an idea when that information might be available. If I might, sir, the AP request was -- is for the calendars. This was actually part of a larger swath (ph) of six FOIA requests that we're engaged in.

CHAFFETZ: OK.

KENNEDY: And if I might, one other thing. The point that I think is relevant here, and also addresses the point that ranking member Cummings made, is that the way the law is constructed now, we are required to produce in response to a FOIA request within 20 days. Given the volume of requests, given the complexity of request, given the classified material, given our other statutory document requests for the foreign relation series, historical declassification. There is simply no way, Mr. Chairman, that I can deal with every government agency and 275 post within 20 days. That is simply a physical impossibility.

That's why we're being sued because I cannot literally, unless I turn the entire State Department off of every national security mission it had and put it exclusively on FOIA. Eventually, I would produce no new documents and I wouldn't have a FOIA problem. But there is a true resource time and other issues that have to be dealt with here, sir.

CHAFFETZ: So, just to be clear. I would like to know how many different versions of calendars Hillary Clinton has and I like to know when you can provide to this committee her calendars while she was serving as Secretary of State. And you'll get back to me in roughly a week. Is that fair?

KENNEDY: I can get back to you with a report on how are processing is coming. Yes, sir. Because what we were doing for all these FOIA request, we were treating...

CHAFFETZ: My request is not a FOIA request, OK?

KENNEDY: I...

CHAFFETZ: So -- I understand -- I don't understand the FOIA part, but I'm just asking you...

KENNEDY: I understand fully. I think -- I think this becomes the 24th request that this committee has made of us in the last -- in the last year. We've already produced...

CHAFFETZ: That's not bad.

KENNEDY: ...108 -- we've already provided this committee with 185,000 pages of documents and we will continue to work with this committee to provide more.

CHAFFETZ: Thank you. I now recognize the gentleman from Massachusetts, Mr. Lynch.

LYNCH: Thank you, Mr. Chairman. I do want to point out that you went over a little bit on your time and I just pray for equal time, thank you.

Mr. Kennedy -- first of all, I want to thank the witnesses for cooperating with the committee and helping us with our work. I want to ask you about the secretary -- former Secretary **Powell's** emails from his AOL account. And I want to point out that he served between 2001 and 2005 as Secretary of State. And during his tenure, there were 92 million data breaches at AOL.

So as Secretary **Powell** laid out in his own book here -- and look, I have enormous respect and admiration for Secretary **Powell** and we remain as a country thankful for his courageous service. But what I'm trying to point out is the disparate nature of this inquiry and how we are completely ignoring what Secretary Rice did and Secretary **Powell** did and instead the committee with nine separate investigations and counting has targeted Hillary Clinton for her conduct under similar circumstances.

So Secretary **Powell** on page 109 of his book, might as well plug it. It Worked for Me: In Life and Leadership, Colin **Powell** -- he says, "To complement the official State Department computer in my office, I installed a laptop computer on a private line." That was an AOL account.

""My personal email account on the laptop allowed me direct access to anyone online. So I started shooting emails to my

principal assistants, to individual ambassadors, and increasingly to my foreign- minister colleagues, who like me, were trying to bring their ministries into the 186,000 mile per second world.” Referring to the speed of light, I guess.

So, a lot of communication, ambassadors, foreign ministers. Arguably some classified information in there, but it’s being done on a completely private line. The problem is that unlike Secretary Clinton, Secretary **Powell** apparently did not save or print out any emails.

I have a letter that you sent on November 12, 2014, ask a unanimous consent to submit it in the record. In your letter you ask Secretary **Powell’s** representative to provide all of Secretary **Powell’s** records that were not in the State Department’s recordkeeping system. Is that correct?

KENNEDY: Yes, sir.

LYNCH: OK. That would have included email from his AOL account that we -- that were work-related, right?

KENNEDY: Yes, sir.

LYNCH: OK. Did Secretary **Powell** -- let me ask you, how many -- how many emails did he produce pursuant to your request?

KENNEDY: Secretary **Powell** responded that he did not have access anymore to any of those records, sir.

LYNCH: He didn’t have access to them.

KENNEDY: Yes, sir.

LYNCH: So the number would be zero.

KENNEDY: Yes, sir.

LYNCH: OK. I have another letter from you dated October 21, 2015. In this letter, you asked Secretary **Powell’s** representative to contact AOL to determine whether any of his emails was still on their system. Is that correct?

KENNEDY: Yes, sir.

LYNCH: OK. To the best of your knowledge, did Secretary **Powell** follow up and do this?

KENNEDY: We never received a response to that request, sir.

LYNCH: OK. I got another letter from you, Ambassador Kennedy, dated November 6, 2015. And in this letter, you inform the National Archives that (ph) Secretary **Powell** never contacted AOL. Isn’t that right?

KENNEDY: That is -- that is correct, sir. LYNCH: OK. And again, Ambassador Kennedy, in July 2015, the Chief Records Officer for the National Archives asked the State Department to contact AOL directly to determine, and I quote, “whether it is still possible to retrieve the email records that may still be present.” Mr. Kennedy, did you ever contact AOL?

KENNEDY: Our lawyers advise, sir, that that we are not a party to...

(CROSSTALK)

LYNCH: Would that answer be a no? Did you contact AOL?

KENNEDY: No, sir. We did not contact AOL.

LYNCH: OK. So, you got the Chief Records Officer asking you to contact AOL and you're saying no and your attorneys are telling you no.

KENNEDY: I'm telling that -- that -- that we cannot make a request for someone else's records from their provider. That request has to be made by them, sir.

LYNCH: Now, at some point, the inspector general informed you that Secretary **Powell** sent classified information from his AOL account. Did you contact AOL then?

KENNEDY: Again, it's the same answer, sir. We ask -- we ask that Secretary **Powell** contact AOL.

LYNCH: So that answer will be no. I mean, that you have a responsibility here though. You admit that by virtue of your position.

KENNEDY: We -- I guess we contacted Secretary **Powell**...

LYNCH: Let me ask you, how many -- how many documents have you given to this committee, pursuant to investigation of Secretary Clinton? What's the number -- what's the number there?

KENNEDY: I know that it's somewhere, probably in the neighborhood of the 50,000.

LYNCH: Just 50,000?

KENNEDY: So far. LYNCH: Given to this committee, pursuant to investigation of Secretary Clinton? I thought we said earlier there are 168,000.

KENNEDY: Those were -- that's not -- those -- we have 23 different request from this committee...

(CROSSTALK)

LYNCH: OK. Let me ask you, how many -- how many documents have you provided this committee pursuant to our investigation of Colin **Powell**?

KENNEDY: I believe we provided this committee the three documents that the...

(CROSSTALK)

LYNCH: Three, OK.

KENNEDY: ...that the FBI...

LYNCH: OK. All right, 50,003. I think it shows you the lopsided focus here. To your knowledge, has anybody at State Department ever picked up the phone and called AOL about these questions?

KENNEDY: As I -- as I said in response to your earlier question, sir. It is -- we cannot get records of another individual from their provider. They have to do it.

LYNCH: I don't get this. This is ridiculous. This is the National Archives asking you to contact AOL, but you didn't do that. You asked Secretary **Powell** to contact AOL, he didn't do that. We have -- he's -- now, you remember Secretary **Powell** served at a very critical time, there was dubious information provided about weapons of mass destruction in Iraq that lead this country to war. There were some very, very important decisions of enormous consequence in this country at that time. And yet, we are totally silent on that inquiry.

Meanwhile, we've have got nine investigations and counting on secretary Clinton. It just -- this is not how this is supposed to

work. This committee is supposed to be pursuing the truth. And I have to say that your noncooperation here, even those it's at the advice of counsel, is I think putting the country at a -- at a -- at a particular point of vulnerability with respect to this investigation.

And -- I just think we're going to do this and we're going to put our Secretaries of State and our national leaders under the microscope. It shouldn't be just, you know, half -- it shouldn't be just the Democrats under investigation. And that's what I feel is going on right here. That's what I feel is going on right here.

And that we've got tens of thousands of documents produced as a result investigation of Secretary Clinton and we've got zero -- well, three. Three documents that you say you have provided with respect to Secretary Powell. This is a sham. This is a sham. And I think -- I think the comments of the a Republican leader earlier indicated that this whole attempt was to rip down Hillary Clinton and ruin her reputation. That's what this is all about.

And we're spending -- we're spending -- look, I didn't have to -- I didn't have to spend any taxpayer money to get Colin Powell's admission that he used a private email system, an unclassified system to go on AOL that was hacked 92 million times during his tenure. I didn't have to spend taxpayer money to find out what he did. All I had to do was read his book, in his own words.

And here we are, like I said, the ninth investigation. Now, we're going to have another one, I expect. Just to rip down Hillary Clinton. And the only reason that we're doing it is because she's running for president of the United States. That's the plain and god awful truth. That's what this is about and it's a shame. It's a shame.

I yield back the balance of my time.

CHAFFETZ: I thank the gentleman. I would highlight that the letter that we sent in January of this year asked the State Department for the current and past four secretaries of State. And I'd ask unanimous consent to enter this record dated January 19, 2015. Sorry I said this year. 2015 into the record, Mr. Chairman.

LYNCH: Would that be '16 or '15?

CUMMINGS: Chairman (inaudible) is some of the document (ph). And I'm wondering, what was the follow-up on that from these folks?

CHAFFETZ: It's incomplete. We don't have all the information yet. We have some, but we don't have...

CUMMINGS: Want to call in Powell and Rice and...

CHAFFETZ: We asked for the current and past four Secretaries of State.

CUMMINGS: I just want to know what we've gotten. I mean,...

CHAFFETZ: Well, let us -- let me get that from the staff. It's a very appropriate question and we will follow up. But it is incomplete. We did ask for it, not just of this current one, not of the past one, but the past four.

CUMMINGS: Can you -- what about AOL? Can we ask them to get us that information? You mean, the (inaudible) which we're going after Hilary Clinton, it seems like we have so much power over the subpoenas and that (ph) we want to get those records. Chairman willing to go to AOL and...

CHAFFETZ: First order of business, I ask unanimous consent to enter this into the record.

CUMMINGS: (Inaudible) CHAFFETZ: Without objection, so ordered. And I will work with you to recover those emails. I just want the federal records. I don't -- I just...

CUMMINGS: All of them?

CHAFFETZ: All of..

CUMMINGS: All of them?

CHAFFETZ: All of them.

CUMMINGS: Yes.

CHAFFETZ: And we have to use the power of the committee to extract them and using subpoenas. I'm willing to do that.

CUMMINGS: You hear that, Mr. Kennedy, we're going to be working with you to get that done.

KENNEDY: I -- yes, Mr. Ranking Member. Could I add one thing?

CHAFFETZ: Sure.

KENNEDY: In consultations with representatives of the four prior Secretaries of State, neither Secretary Albright nor Secretary Rice used email. Not -- they have certified that the us.

CHAFFETZ: Yes. And that -- and that's my understanding. I would also note that we rely heavily on inspectors general, and there is an inspector general report on this. And it's very frustrating that the inspector general, in partial, in there to do their job, the only person that refuses to interact is Hillary Clinton. And that's just the fact, that's not political, that's not -- it's just a fact. She won't cooperate with the inspector general.

Even the State Department asks for an electronic copy that was never provided. There is but one investigation. One investigation that we are conducting relating to what's happening here. And that these federal records and the potential destruction.

We have other inquiries of the State Department, Arden Embassies (ph), embassy's security. Things that we're doing in very much a bipartisan way. But let's be careful on how we representatives this. There is one investigation.

CUMMINGS: And (inaudible)

CHAFFETZ: We were quiet until (ph) the FBI. And when the FBI testified that they didn't even ask these questions, it begs the question that we have a job to do and we're going to do it.

CUMMINGS: Mr. Chairman, just...

CHAFFETZ: Yes. Sure. CUMMINGS: I know we want to move on. I'm looking forward to working with you to get all the records. I think the American people deserve that.

CHAFFETZ: Yes, I agree.

CUMMINGS: And I don't want it to be a one-sided, single investigation of Hillary Clinton because I do think it goes against the integrity of the committee.

CHAFFETZ: I hear you (ph).

LYNCH: Mr. Chairman.

CHAFFETZ: Mr. Lynch, yes.

LYNCH: Just in terms of Ambassador Kennedy's last comment, that he reached out to Secretary Albright and Secretary Rice.

Secretary Rice served between 2005 and 2009. That was well into the era of email. Have you checked if she have a personal account or any -- I mean, they certify they didn't use email, I find that very hard to believe.

KENNEDY: I have spoken personally with Secretary Rice's attorney in he -- that was his response, sir.

LYNCH: OK.

CHAFFETZ: But I believe he was asking about Secretary Albright too.

LYNCH: I was asking about Secretary Rice, 2005 to 2009.

CHAFFETZ: Right. I will now recognize the gentleman from Florida, Mr. Mica, for five minutes.

MICA: Well, again, for the record, Ambassador Kennedy, you did say that they did not use -- the two previous did not use email. Is that correct?

KENNEDY: That is what -- we have -- we have no record...

MICA: OK. Well...

KENNEDY: And we have talked to their representatives, Mr. Mica, to confirm that.

MICA: OK. So again, the way we got into this folks is that we had a legitimate investigation into what took place in Benghazi and actually all of this was discovered sort of by accident. But the fact is, Mr. Finney, how long have you been in your position with State over correspondence and records?

FINNEY: Yes, sir. I came to the State Department...

MICA: I can't hear you. Real loud. FINNEY: I'm sorry.

CHAFFETZ: Real close, there you go.

FINNEY: Yes, sir. I --

MICA: What year?

FINNEY: Yes, sir. I came to the State Department in July 2006.

MICA: And the fact is, in 2011, actually you were first alerted to the use of the secretary. Here's a picture of the secretary. This is an article from a publication that's -- that said you identified in 2011 or raise questions about how the secretary was operating. And I guess did you go to Lang and Lang made you aware that she was using a private server? How did you find out she was using a private server?

She -- you asked the question was she using a government account? And the response came back, "No." Who told you that?

FINNEY: That was told to me by individual within SESHRM. Specific person, I could not remember.

MICA: But that goes back some time ago. Now, you have an important responsibility. You're supposed to keep the records and correspondence when they leave office. And then you meet with folks.

I mean, these are members of Congress, we all have the same obligation. We are custodians or trustees of information. And some of that, we cannot take with us. You're not supposed to -- in fact, I think it's against the law. Isn't there a statute prohibiting taking that with you? Is that...

FINNEY: Yes.

MICA: I'm not an attorney -- OK, yes.

FINNEY: Yes, sir.

MICA: You met with the Secretary Clinton staff, did you not -- did you meet with the Secretary or just her staff?

FINNEY: I met with her staff, sir.

MICA: And -- is it Abedin? Was she there? And you told them the obligations of what they had to turnover? Did you -- did you provide them with that information?

FINNEY: First of all, exactly who was in that meeting, I have to go back and...

MICA: OK. But Abedin, was she there?

FINNEY: Again,...

MICA: Yes. OK. But you told them what the obligation under the law and requirements to the State Department are turning -- returning information.

FINNEY: Yes, sir. Myself and the Agency Records Officer.

MICA: At the time, did you mention anything about what was on a private server of business that may have been conducted from -- on this -- you know, the official capacity?

FINNEY: Again, I had no idea of a...

(CROSSTALK)

MICA: But you told them anything dealing with public information that should be part of State Department documents that you are the custodian for, should be turned over to you. Correct?

FINNEY: We briefed them about what their responsibilities are, sir.

(CROSSTALK)

MICA: And then, how long did it take? We heard there -- again, this request with them as they left. I'm told it took two and a half years for the first so-called dump -- data dump. Is that correct, Ambassador Kennedy?

KENNEDY: Could you...

MICA: How long before -- when did you get the first dump of information from Clinton's?

KENNEDY: In December, sir.

MICA: Of last year?

KENNEDY: December '14.

MICA: Fourteen. But it was sometime after they left.

KENNEDY: That is correct, sir.

MICA: Two years after they left. I had two and a half years...

LANG: Sir, if I may?

MICA: No, I have a limited amount of time. And were you told at the time that that was all the information? Did anyone tell you that that's all the information they had in data and emails?

KENNEDY: If we're talking about the delivery in December

MICA: Yes.

KENNEDY: ...of 2014 to the 55,000...

MICA: Was there a transmittal document?

KENNEDY: We received...

MICA: The transmittal document say 'this is all we have' or 'this is everything we found.'

KENNEDY: I believe it's something...

MICA: I'd like to see that transmittal document too. But then you tell me the FBI has been dumping additional data to you all, records that they found, that they did not provide, right?

KENNEDY: What the FBI essentially did to the best of my understanding, sir, is use forensics to go

MICA: I know, but they -- but my point is that there's a requirement under law to turn over the documents. And this gentleman is responsible. He told them what to do...

KENNEDY: Right.

MICA: ...and the terms of the law or the regulations and they were to comply. They did not.

KENNEDY: They -- according to their...

(CROSSTALK)

MICA: I want to see the documents. They obviously didn't and we have gotten dumps of additional information according to the testimony you gave here today. I want to know about the destruction of the -- of the hammering of the BlackBerries.

Those were personal BlackBerries that the Secretary own, is that what I'm told. They were not -- that was not federal property. Do you know? You're the custodian of the properties or the data. Should they have turned the BlackBerries over if there were government BlackBerries?

FINNEY: First of all, sir, I'm responsible for the records of the individuals who are...

MICA: But they also have to give over property. You don't know anything about the hammering of the BlackBerries or whether they're personal? And I also I want to -- I'd like to know for the record too, the staff BlackBerries that were turned over. If any of those were not turned over, if they were destroyed too.

Mr. Chairman, I request that information. I yield back.

CHAFFETZ: I thank the gentlemen. We'll now recognize the ranking member, Mr. Cummings.

CUMMINGS: Thank you very much, Mr. Chairman. Mr. Kennedy, Ambassador Kennedy, I am extremely concerned, as I've said before, about this whole issue of classification. You got people being accused of crimes and a lot of it -- and it becomes very significant what's classified and what's not classified. I think you -- would you agree with that? It is significant.

KENNEDY: Classification is always significant.

CUMMINGS: Yes.

KENNEDY: Yes, sir, Mr. Ranking Member.

CUMMINGS: So, Mr. Kennedy, I want to ask you about the instances when experts from different agencies disagree about whether information is classified. I have an email here dated April 10, 2011. It was written by someone from the State Department Operations Center, based on a phone call because (ph) received into was a special envoy to Libya. It's up on the screen.

In the first line of the email it says, and I quote, "SBU for a special envoy Stevens." What does SBU mean?

KENNEDY: It means -- it means sensitive but unclassified, sir. Unclassified.

CUMMINGS: So this email was explicitly marked unclassified. Is that right?

KENNEDY: Yes, sir.

CUMMINGS: And it appears that the special envoy Stevens considered this information unclassified. Is that correct?

KENNEDY: That is correct, sir.

CUMMINGS: So anyone reading this email would assume that it was not classified. Is that correct?

KENNEDY: That is correct, sir.

CUMMINGS: The problem is that at some point after the email was sent, the intelligence community came and claim that it was classified. Was sent (ph) 15 2015, the State Department sent a letter to Senator Corker explaining that the intelligence community was wrong. The letter stated and I quote, "someone with intelligence community, later subsequent to its boasting (ph), claimed should have been redacted as secret."

The letter from the State Department goes on to say, that this objection that the email should have been treated as classified was I quote "surprising and in the department's judgment, incorrect." Ambassador, why was it surprising? Does someone in the intelligence community claimed that this email was classified?

CUMMINGS: Mr. Chairman -- Mr. Ranking Member, there is a common discussion, a common thread that runs between the State Department and the intelligence community constantly. And it's call in our parlance, parallel reporting.

State Department officer in the courses of his or her responsibility goes out and talks to people. Receives information. There is no classification attached to that information, in other words, the foreign government did not provide us classified information. So it was an unclassified discussion between a State Department officer and a private citizen, a foreign government official or whatsoever.

We file that report unclassified, sensitive but unclassified at times. We do not classify it. As this is going on, the intelligence community, through either human intelligence or national technical means, in effect, steals the same information. Or something very close to it. And they classify it. And they're classifying it because of the sources and methods involved in attaining it.

So we often see parallel reporting. State Department unclassified reporting and intelligence community reporting, talking to the same matter. And therefore, you can have a document that is very close.

We looked at this very carefully and we were surprised, which is why we use that term in that letter, is because a number of the data points in this letter -- excuse me, in this email reporting, Ambassador Stevens' conversation, are different. And therefore these are separate.

So we -- but the problem, Mr. Ranking Member, of parallel reporting is something we see all the time. But is actually a good thing. Because no government wants to operate on a single thread.

CUMMINGS: It's a bad thing though when the FBI could possibly bring charges against somebody for disclosing documents that they claim to be classified, when in fact they weren't classified.

(CROSSTALK)

CUMMINGS: So, I mean, you call it healthy all you want.

KENNEDY: Mr. Ranking Member, what I'm saying is we did not classify it. This is our information in this email that you're referencing, Mr. Ranking Member. This is also information that parallels public press briefings from the NATO press office in Brussels.

And so this, this is unclassified. If the FBI came to us and said, "We want to take this as a court action." We'd say, "This information is unclassified." We would so certified it as we have.

CUMMINGS: So, just the last question. Unfortunately, this gets even more confusing because when the FBI issued its report to Congress, they told us that email was classified at the time that it was sent. Do the FBI asked the State Department, whether you consider this specific email to be classified?

KENNEDY: I can't give you a particular answer. I know we provided information to the FBI and this was one of the documents we certified is unclassified.

CUMMINGS: And so, do you have any suggestions as to how we go forward with regard to trying to clear up these -- because there is no arbiter, is that right? Is it an arbiter -- in other words, have you got intelligence saying it's unclassified -- it's classified, you got State saying it's unclassified. I mean, who arbitrates this? I mean, how do we come up to a conclusion?

KENNEDY: If I understand the rules, Mr. Ranking Member, that each agency is the authority over the documents that it produced. The State Department produced this document, the State Department has said it's unclassified. And therefore, de facto, de jure, it is unclassified.

CUMMINGS: Thank you very much.

KENNEDY: Mr. Ranking Member, can I ask -- since you made reference to the letter to us, Senator Corker, could I ask that that letter be entered into the record?

CUMMINGS: I certainly -- I thank you for that. I meant to do that and I ask it be a letter dated November 24, 2015 to Senator Corker be made upon (ph)

CHAFFETZ: No objection, so order.

CUMMINGS: Thank you very much.

CHAFFETZ: I thank the gentleman. I now recognize the gentleman from Ohio, Mr. Jordan, for five minutes.

JORDAN: Thank you, Mr. Chairman. Ambassador Kennedy, how long have you worked to the State Department?

KENNEDY: A little over 42 years, sir.

JORDAN: And you're the guy at the State Department currently responsible for record retention, maintain the records and complying with all appropriate records laws and archive laws. Is that right?

KENNEDY: I am -- I am the senior agency official. I have a number of people who assist me in that responsibility.

JORDAN: You sent a letter to former -- four former Secretary of State about records and getting information from those previous Secretary of State. Is that accurate?

KENNEDY: Yes, sir.

JORDAN: When -- well, actually, you sent to their designees, if I remember correctly.

KENNEDY: Yes, sir. They were -- to our (ph) designees.

JORDAN: Their lawyer or their...

KENNEDY: Attorneys or their...

JORDAN: Yes. KENNEDY: ...or their senior staff representative.

JORDAN: When did you send that letter?

KENNEDY: I believe it was sent in July, August '14.

JORDAN: I thought it was on...

KENNEDY: October '14.

JORDAN: OK. That's what I thought. I had October 28, 2014. And why did you send that letter? What prompted you to decide that you needed, excuse me, to send that letter to the four previous Secretary of State?

KENNEDY: Basically we had been reviewing thousands of pages of documents in response to a number request, including requests from this -- from this committee, regarding the Benghazi, its temporary special mission attacks. And as we work through all the documents, all the -- all the volume of material involved in that process, we notice that there was the use of a non-state email address that apparently may have come from Secretary Clinton.

JORDAN: Well, that's not what you told us when we deposed you in February this year. You said you did it because of NARA concerns.

KENNEDY: Well because -- yes.

JORDAN: Was that the same difference?

KENNEDY: It's the same difference.

JORDAN: All right.

KENNEDY: We saw a potential federal record, and therefore...

(CROSSTALK)

JORDAN: So what prompted you was the Benghazi committee request and request from this committee and FOIA request. And not (ph) you were complying with the NARA law. Is that right?

KENNEDY: No, we were -- we were looking through documents in response to a committee request.

JORDAN: OK.

KENNEDY: We saw evidence that there might be a federal record from a nonfederal source.

JORDAN: Got it.

KENNEDY: And that then trips our requirements to...

(CROSSTALK)

JORDAN: Between the time you knew...

KENNEDY: ...the Federal Records Act.

JORDAN: When all this prompted you, request and the NARA law, everything else, when all this prompted you, between the time you knew you had to do something different and when you actually sent the letter, did you talk to any of the former Secretaries of State, any of those four or any of their four designees?

KENNEDY: Not to the best of my recollection.

JORDAN: Did you communicate with any of them?

KENNEDY: Not to the best of my recollection.

JORDAN: Did you meet with any of them or talk to any of them about any subject?

KENNEDY: I regularly in communication with former -- one of the responsibilities of the position of the undersecretary for management is to be in contact with former Secretaries of State on managerial, administrative support issues.

JORDAN: Did you -- did you...

KENNEDY: So the answer to that is yes.

JORDAN: And it -- well, let me just get specific. Did you talk to Cheryl Mills between the time you knew you had to do something different with record retention and when you sent the letter?

KENNEDY: I don't remember doing so, sir.

JORDAN: You don't remember talking to her at all?

KENNEDY: I don't remember talking to her about the records.

JORDAN: Did you meet with her at all -- in that timeframe?

KENNEDY: Cheryl Mills was and remained beyond the departure of Secretary Clinton, as the special representative for Haiti. And I had a -- because of the importance of...

(CROSSTALK)

JORDAN: You told us in February you had lunch with her in this timeframe...

KENNEDY: Yes.

JORDAN: ...and you met with her on numerous occasions. Is that accurate?

KENNEDY: That is -- that is what I'm saying, sir.

JORDAN: OK. You also said when we ask you, I ask you, I said, "Between the time you learned that you need to do something different, as far as retention goes, and when you actually sent the letter you had numerous conversations with Cheryl Mills." But you're saying none of them dealt with this issue.

KENNEDY: That is correct because...

JORDAN: In fact, you answered me and you said this, "I never tipped her off." Is that accurate?

KENNEDY: If I -- could I...

(CROSSTALK)

JORDAN: I'm just quoting back what you said to us in that deposition.

KENNEDY: I'm not -- I'm not changing my deposition one item. But two things, sir. One is I was not brought up to date immediately on the fact that my colleagues and staff had come across this one email thing. And then we're researching through the material. That was not brought to my attention much later.

JORDAN: Here's what I want to get to. The FBI released their report last Friday. They say on page 15, "During the summer of 2014, State indicated, State Department indicated to Cheryl Mills, a request for Clinton, Clinton's work-related emails would be forthcoming. And in October 2014, the State Department followed up by sending an official request to Clinton, asking for her work-related emails."

Now, you just said in February when you were under oath and you were deposing in front of the Benghazi committee that you never tipped her off. But somebody tipped her off because during the summer of 2014 she got a heads up that this letter was coming. Do you know who tipped her off?

KENNEDY: No, sir, I do not.

JORDAN: And it wasn't you, Ambassador Kennedy?

KENNEDY: Not to the best of my knowledge. No, sir.

JORDAN: Were you -- Ambassador Kennedy, were you interviewed by the FBI?

KENNEDY: Yes, sir.

JORDAN: Ambassador Jacobs, did you tipped Hillary Clinton off in the summer of 2014 before this letter?

JACOBS: No, sir. I did not.

JORDAN: Were you interviewed by the FBI?

JACOBS: No, I was not.

JORDAN: Ms. Lang, did you tipped Hillary Clinton off or Cheryl Mills off in the summer of 2014?

LANG: No, I did not, sir.

JORDAN: Were you interviewed by the FBI?

LANG: No, I was not, sir.

JORDAN: Mr. Finney? Did you tip Cheryl Mills off?

FINNEY: No, sir.

JORDAN: Did you tipped Hillary Clinton off?

FINNEY: No, sir.

JORDAN: Were you interviewed by the FBI?

FINNEY: No, sir.

JORDAN: So, somebody who was interviewed by the FBI told the FBI we tipped her off. Have you done an investigation, Ambassador Kennedy, on who might have tipped off -- I mean, what -- here's what this gets to. Once again, Hillary Clinton gets treated than -- different than anybody else. She got tipped off.

I don't think -- I don't think Ambassador **Powell** got tipped off. Have you -- have you started an investigation, Ambassador Kennedy, on who might have tipped Hillary Clinton off before she got the letter requesting these documents?

KENNEDY: No, sir. I have not. I have not.

JORDAN: Any idea who did tip her off?

KENNEDY: No, sir.

JORDAN: I yield back.

CHAFFETZ: I thank the gentleman. I now recognize the gentleman from Pennsylvania, Mr. Cartwright, for five minutes.

MATT CARTWRIGHT: Thank you, Mr. Chairman. Ambassador Kennedy, I want to ask you some questions about the three emails out of the 30,000 that FBI director Comey reference. That supposedly had some kind of classification markings on them.

And of course, if anyone's scoring along at home, that means 29,997 emails produced with no markings whatsoever. Not even defective or incorrect classification markings. I want to talk about the manual on how you -- how you properly mark a classified document.

Executive Order 13526 and the directive implementing it require classified documents to be marked in a certain way. The document must identify the original classifier. Correct, Ambassador Kennedy?

KENNEDY: That is correct, sir. There is a, in effect, a four line marking that must go...

(CROSSTALK)

CARTWRIGHT: It must identify the agency of the office of origin. Correct?

KENNEDY: Yes, sir.

CARTWRIGHT: Must identify the reason for classification. Correct?

KENNEDY: Yes, sir.

CARTWRIGHT: It must identify the date for the classification, right?

KENNEDY: Yes, sir.

CARTWRIGHT: And classified documents typically have to have a banner or a header at the top and bottom that say 'classified' along with the level of classification. Am I correct in that?

KENNEDY: Yes, sir.

CARTWRIGHT: OK. So five different requirements in the manual. And the three emails that Director Comey testify about had none of these indicators. Am I correct in that?

KENNEDY: That is correct, sir.

CARTWRIGHT: Not one of the five required marking requirements. Am I correct in that?

KENNEDY: That is correct, sir.

CARTWRIGHT: OK. The three emails had none of them, as a result Director Comey, sitting where you're sitting right now testified that it would be reasonable for somebody looking at a document with none of these required markings, immediately to infer that they were not classified. Are you aware of that testimony?

KENNEDY: I am aware of it, sir.

CARTWRIGHT: And you agree with Director Comey that someone who is familiar with properly marking classified documents would reasonably consider such a document without any of these five requirements not classified.

KENNEDY: I fully agree with the director.

CARTWRIGHT: Now, State Department spokesman, John Kirby, said that the parentheses C markings, the one that referred to confidential, the lowest level of classification. On those three emails, John Kirby said those markings themselves were in error and they were not quote "necessary or appropriate at the time they were sent as an actual email." Is that your understanding as well? KENNEDY: Yes, sir.

CARTWRIGHT: Well, I want to show you one of these emails and it stated that August 2, 2012. The marketing -- and we have that up on the screen for you as well. Do you have that, ambassador?

KENNEDY: I do, sir.

CARTWRIGHT: All right. The marking that Director Comey referred to is the C in parentheses at the beginning of the email. And that's the marking that the State Department said was a mistake. Do you see that?

KENNEDY: Yes, sir.

CARTWRIGHT: And then four paragraphs followed. Do you see them?

KENNEDY: Yes, sir.

CARTWRIGHT: Each of the paragraphs says SBU and we've covered that in today's hearing. SBU means sensitive but

unclassified, right?

KENNEDY: That means -- yes, sir. And that means it does not have to be moved in classified channels.

CARTWRIGHT: So every one of these four paragraphs in the -- in the bulk of this email are sensitive but unclassified, right?

KENNEDY: Yes, sir.

CARTWRIGHT: OK. So this email is, in fact, unclassified and it always has been, hasn't it?

KENNEDY: Yes, sir.

CARTWRIGHT: Now, do the FBI consult with you about the classification status of this email.

KENNEDY: They did not consult with me personally. I know the State Department did provide some input to the FBI, but their decisions are their decision -- their writings are their writings.

CUMMINGS: When you say 'their', who do you mean?

KENNEDY: The FBI, sir.

CARTWRIGHT: All right. Do you know why the FBI did not consult with you about the classification status of this email?

KENNEDY: I would have to check, congressman, to see if they consulted with someone else at the State Department. I know they did not consult with me.

But the -- but as you correctly point out, the subject line, there is -- does not have any classified material in it nor does the text of the -- of that. And even the redactions that are there, redaction b5 is the redaction for deliberative process, not for classification. So this document is unclassified.

CARTWRIGHT: I thank you, ambassador, and I yield back.

CHAFFETZ: I thank the gentleman. I now recognize the gentleman from Michigan, Mr. Walberg, for five minutes.

WALBERG: Thank you, Mr. Chairman. And thanks to the panel for being here. Mr. Finney, when did you first become aware of the extent to which Secretary Clinton relied on private server emails to address her -- her -- her conduct, her responsibilities in State Department business?

FINNEY: sir, I couldn't give you the actual date and time frame, but I do know that when we started receiving the actual documents at State Department, that's when I came to realize that she is using another device other...

WALBERG: Do you recall a January 2009 FOIA request for correspondence related to Secretary Clinton?

FINNEY: sir, without looking at the case, I couldn't specifically know.

WALBERG: But you would -- you would identify the fact that you have logs. So, if you can't recall it -- right here there's a January 9, '09 request for information on correspondence from Secretary Clinton. So you would be able to go back, whether you recall it right now.

FINNEY: Yes, sir. If we received it in the executive secretary, then we could go back.

WALBERG: On the basis of that, did you review email correspondence from the secretary in putting together the response to this January 2009 request?

FINNEY: No, sir. Because we did not have emails. She did not have a state.gov account, so we could search was RX (ph) that we had, sir.

WALBERG: So, you then, as I understand it, did not realize the extent to which the secretary was using her private email server. And on the basis of that, you're saying you couldn't do anything about it?

FINNEY: Again, sir, did not know that she had a server or other email accounts that she was using until we receive it in the department.

WALBERG: Well, how was -- how was -- if this request was made in 2009, how was the department able to close a request for correspondence covering Secretary Clinton when the department did not have access to all of the email correspondence from the secretary?

FINNEY: Again, sir, I would have to see the specific request and see what they're asking and see if in fact was...

(CROSSTALK)

WALBERG: But they did ask, you got a log of that.

FINNEY: Again, sir, I would have to see if we and the executive secretary perceived it (ph). Because FOIAs come in, they do not come directly to the executive secretary. They come to a bureau (ph).

WALBERG: Now that you know, is the department reopening request that would encompass the secretary's emails that were closed prior to disclosure? That she was using her private server, private emails for conducting official business?

FINNEY: I'm not able to answer that question, sir, because I'm only responsible for the executive secretary...

WALBERG: Who would be responsible for that? Mr. Kennedy, now that you know it?

KENNEDY: Now (ph) that is why, congressman, that we have posted all of the 52,000 emails we received on the State Department's public website. So that if there was an email that we now have, but we did not have been. And therefore, since we did not have it, we were telling the truth in response at that moment.

If anyone thinks that one of their inquiries did not get a full response, we have posted all that material. All the 52,000 odd documents to our public FOIA website in a searchable form. So that we can be, in effect, retroactively responsive to any -- to any earlier inquiries that we did not have records of then.

WALBERG: Wow.

KENNEDY: So we are at 50 -- anyone who had made a request, they can now go to our website and they -- all the 52,000...

WALBERG: So we got the request.

KENNEDY: Pardon me, sir?

WALBERG: We have the request then, on the website. That's what you're saying?

KENNEDY: No, we have the documents on the website.

WALBERG: OK.

KENNEDY: All 52,000 documents are on the website. And therefore, if we did not respond before, because we did not have the record then and we have the record now, the 52,000, we put all 52,000 of them up on the State Department public website accessible to every member of the public.

WALBERG: Again, Mr. Chairman, I think this is the reason for this hearing, isn't it? The sloppiness, the messiness and the ability for a Secretary of State to do something that shouldn't have been done. Mr. Finney, do you recall a FOIA request from August 27, 2010 that specifically request the email sent to Hillary Clinton?

FINNEY: Not right off answer (ph).

WALBERG: As of January 25, 2011 this request had been marked pending, giving of -- given that this FOIA request specifically asked for records related to email sent to the secretary. Your processing should have, as I understand, include a review of the secretary's inbox. Did that processing take place?

FINNEY: Again, sir, I'll have to see if in fact the executive secretary actually received the request.

WALBERG: Mr. Chairman, I yield back.

CHAFFETZ: I thank the gentleman. Before it is -- yield for second. There is a choice. The secretary had a choice. She chose to not abide by the rules of the State Department and she went off and -- for her own convenience, created her own account, her own server and her own mess.

WALBERG: Federal records.

CHAFFETZ: Federal records. There was a choice there. This is not a mistake. A mistake is when you accidentally put the letter E at the end of potato. This is a conscious decision to go a different route.

And if you want to protect yourself and make sure that there is not a reclassification problem or something else, then use the .gov account. That's why it's there. It's safe and secure.

And by the way, there are two systems at the State Department. You can't just take classified information and hit forward. That doesn't work like that. So, we got to get into the -- to the depths of this. It's in part why we have the hearings next week.

But this is very conscious choice and she chose not to use the safety, the security, the expertise of the State Department. She put the country in federal records in jeopardy and created this mess that these poor people are going to have to clean up for years to come.

I now recognize Mr. Lieu of California.

LIEU: Thank you, Mr. Chair. Ambassador Kennedy, it's true, isn't it? That the Freedom of Information Act does not apply to members of Congress?

KENNEDY: To the best of my knowledge, sir, that is true.

LIEU: Let me just let that sink in for a moment. We in Congress have passed this law, asking other federal agencies to meet these standards that we ourselves are unwilling to meet. It is pure hypocrisy. It is a double standard.

But it gets worse in this case. Did you know, ambassador, that all members of Congress get security clearances?

KENNEDY: I believe so. Yes, sir.

LIEU: And we get it not because we go through a background check, but because we happen to win the most number of votes in our district. And as members with security clearances, we get to have private email servers. We can have one private email server, we can have five, we can have 27.

We could have private email accounts. We can conduct official business on our private email server, on our private email account. So, I'm not going to continue to participate in the hypocrisy of today's hearing. Instead, I like to use the remainder

of my time to talk on that issue that actually matters.

And that is the slaughter of children and civilians in the country of Yemen being enabled by the US Department of State. And ambassador, as a principal advisor to John Kerry and as undersecretary, I'm sure that you know that last year the State Department started providing material assistance to Saudi Arabia who led military coalition in the country of Yemen.

Are you aware that numerous human rights groups such as Amnesty International, Human Rights Watch, as well Reports Underground have documented numerous war crimes being committed by this Saudi Arabia led military coalition?

KENNEDY: Congressman, I have seen references to that in the press. But if I might, not in an attempt to avoid your question because I would be glad to arrange for someone to -- there are six undersecretaries at the State Department. I'm the undersecretary for management. My writ is rather large, but it does not -- it does not encompass political...

LIEU: Yes, I...

(CROSSTALK)

CHAFFETZ: ...military activities or military assistance or others.

LIEU: I understand and...

KENNEDY: I'll be glad to work with you though.

LIEU: I understand. As in -- as a member of the minority party, I do not get to set the agenda, but I have State Department officials here, so I'm going to ask these questions. Are you aware that Amnesty International published a report, documenting at least 33 cases where the Saudi Arabia coalition, with the assistance of United States, targeted and killed civilians, many of them nowhere near military targets? And you can just answer yes or no.

KENNEDY: I have not seen that report, sir.

LIEU: Are you aware that just last month, the Saudi Arabia led coalition targeted and killed a -- children at school, there are 28 kids, 18 were injured, 10 were killed. Some were as young as 6, 7, 8 years old. Are you aware of that?

KENNEDY: No, sir, I am not.

LIEU: Are you aware that the Saudi Arabia led military coalition struck a fourth hospital facility last month. This time a Doctors Without Borders hospital, killing numerous patients, doctors and hospital staff. Are you aware of that?

KENNEDY: I think I may have seen that in the newspaper, sir.

LIEU: You would agree with me, wouldn't you, that it is a war crime if you target and kill civilians nowhere near military targets?

KENNEDY: I am not -- I am not a lawyer, sir, but obviously the target -- the direct and -- the direct in targeting of -- of -- of civilians without any other justification is certainly not acceptable.

LIEU: Thank you. And you're aware that the United States is providing refueling of Saudi Arabia jets, logistical support, intelligence and other assistance. Correct?

KENNEDY: I am aware that we are assisting the Saudi Arabian forces to combat terrorist activities in Yemen. Yes, sir.

LIEU: And the State Department has now proposed yet another sale of billions of dollars of arms, ammunitions to Saudi Arabia. That the State Department noticed when Congress was in recess, so we'd have very little time to act on it. Is that correct?

KENNEDY: I am -- I am not aware of that congressional notification, sir. But I do aware -- aware that we work with the government of Saudi Arabia to help combat terrorism in the Middle East.

LIEU: Combating terrorism is fine, using war crimes to do it is not fine. Are you aware that a person who aids and abets someone who is committing war crimes can also be guilty of war crimes?

KENNEDY: I -- no, sir, I am not a lawyer.

LIEU: OK. So my recommendation is that you check with the lawyers of the State Department and you ask them the question, "Why is the State Department looking like it is aiding and abetting the commission of war crimes in Yemen?" And with that, I yield back.

KENNEDY: I promise you, sir, that I will arrange for the appropriate senior official of the State Department to be in touch with you.

CHAFFETZ: And to Mr. Lieu, I would also...

KENNEDY: Thank you.

CHAFFETZ: To Mr. Lieu, I'd also add that we have, for a couple of months, been trying to get Secretary Kerry to come appear before this committee, sensitive to his schedule. But we're at the point where we may have to step it up a notch. But it is the intention of the committee to have the secretary come to answer. So hone those questions and hope that it will happen in the next week or two.

LIEU: Thank you, Mr. Chair.

CHAFFETZ: Thank you. I will now recognize the gentleman from South Carolina, Mr. Gowdy.

GOWDY: Thank you, Mr. Chairman. Mr. Finney, I had a series of questions for you that I'll submit to you in writing. I'm going to have to deviate from what I plan to do because of the ranking member's opening statement, which I found instructive, if not predictable. So I wanted to summarize for just a second.

Secretary Clinton said she followed all State Department rules and regulations but the truth is she did not. Secretary Clinton said her unique email arrangement was approved by the State Department, but it was not. Secretary Clinton said she use one device for convenience, but she did not.

Secretary Clinton said she did not send or receive classified material, but she did. She said she turned over all of her work related emails, but she did not. She said her attorneys personally reviewed each email, but they did not.

So when faced with a series of demonstrably false statements, utterly impeached by both fact and logic, the ranking member did what lots of criminal offense attorney do which is a blame the investigator. And when that didn't work, they throw the Hail Mary pass of all criminal offense attorneys, "Other people did it too."

Which brings me to General Colin **Powell**, one of most respected people in our country's history. You know, Secretary Clinton told the FBI, and I'll concede she says different things to the public than she says of the FBI. But she told the FBI that Colin **Powell's** advice had nothing to do with her decision to set up her unique email arrangement with herself.

And I will say that again in case anybody missed it. Secretary Clinton told the FBI under penalty of not telling the truth, that Colin **Powell's** advice, email, had nothing to do with her decision to set up that unique email arrangement with herself.

Now, I will say this in defense to Mr. Cummings, I understand why he may not believe here. I understand that. I understand why he may have credibility issues with anything the secretary said. I get that.

But I don't think it would have been fair when you are using your opening to criticize Colin Powell, to at least point out the person you're trying to defend doesn't even say Colin Powell was the impetus behind her decision to have that unique email arrangement with herself.

So, let me ask you this. Senator Clinton was asked because she frequently says 90 to 95 percent of her emails were in the State Department system. Have you heard her say that?

FINNEY: Sir, I can't recall.

GOWDY: Well, it won't take you long to find it. She says it a lot -- or she said it a lot. And then she was asked, "Who told you that? Who told you that not even 95 percent of your emails were in the State Department system?" You may find her answer interesting. "We learned that from the State Department and their analysis of the emails that were already on the system. We were trying to help them close some gaps." I like the word gaps.

I guess if you consider the Grand Canyon to be a gap, then yes there were some gaps in her email. Did you have 90 or 95 percent of her emails on your system?

FINNEY: Again, sir, the only emails we would have is what has been provided recently which was that 55,000 that we got those (ph)...

(CROSSTALK)

GOWDY: Well -- no, I'm going back before that, Mr. Finney. She said you already have them before she gave them to you. You already had 90 to 95 percent. Was that true?

FINNEY: Again, sir, the emails that we're looking at (inaudible) state.gov emails, she did not state.gov accounts and as far as the emails that we receive from her came at that time frame when it was turned to department. And it was processed by a bureau.

GOWDY: But she made this contention before she ever returned them. She said you already had 90 to 95 percent. She was just helping you fill in some gaps. If you had 90 to 95 percent, why weren't you comply with for you (ph)?

FINNEY: Again, sir, what I have in our system is what received by a bureau.

(CROSSTALK)

GOWDY: Let me see if I can put that in South Carolina terms that I can understand. If she said that you already had 90 to 95 percent of her emails before she ever return them, that ain't true.

FINNEY: Sir, if I may say this. Unless she's talking about the files that were sent to individuals within the State Department since to their state.gov account.

GOWDY: Well, how does that capture personal to personal emails? And how about the 14,000 that she didn't turnover? Did you have those?

FINNEY: Again, sir, what you're talking about her...

(CROSSTALK)

GOWDY: I understand her position. The fact that I didn't keep them doesn't met that whoever I sent it to didn't keep it. I get that.

What if it's private to private? How are you supposed to have Sidney Blumenthal's emails if its private account to private account? How do you have that?

FINNEY: Sir, if you look at what we are doing today in concordance to the Federal Records Act of 2014 that was amended, it requires that if an employee uses their Gmail account or private issued account, there are required by law to send that email to their state.gov account. That was amended in 2014 and that is what I'm briefing in the State Department breach (ph) today.

GOWDY: It sounds like it was 30 years too (ph) late but I'm out of time.

CHAFFETZ: I thank the gentleman. I now recognize the gentlewoman the Virgin Islands, Ms. Plaskett, for five minutes.

PLASKETT: Thank you very much, Mr. Chairman. And good morning to you all. Thank you for being here.

I believe that the ranking member and I don't want to get into his head, was pointing out the disparity between the two secretaries not to absolve secretary Clinton of her responsibility. Because as we've all seen in testimony that she's given, that she is taking full responsibility for her own emails. But to point out the disparity and the bias in this own committee and how it treats different Secretaries of State.

I would ask you about some emails that I hope you have received from other secretaries. Ambassador Kennedy, do you have any emails from the Secretary of State who was the Secretary of State in December 2002 or January 2003?

KENNEDY: No, I do not.

PLASKETT: And that would be Secretary Colin Powell, would that not?

KENNEDY: Yes, ma'am.

PLASKETT: Those are very interesting emails I would think because that would be the two months before he gave testimony on February 5, 2003 before the United Nations saying that there were weapons of mass destruction which has resulted in the death of almost tens of thousands of Americans with the Iraq war. But this committee, which says that it's investigating these breaches in the email, because they're concerned with the lives of Americans, don't seem to be concerned with the email traffic that went on that precipitated that testimony, which led us to war.

They're not concerned at all with those emails. But their concern was Secretary Clinton emails. How many emails have you received from Secretary Colin Powell?

KENNEDY: The only ones that I am aware of that are in our possession are the documents that you just handed out. That we received via the FBI and an interchange between Secretary Clinton and then former Secretary Powell.

PLASKETT: I've got a great one from that exchange, which is an email exchange between Secretary Clinton and former Secretary Colin Powell from January 23, 2009. And we could put that up there. And I'd ask unanimous consent to submit that into the record.

This is two days after Secretary Clinton was sworn in, when she asked Secretary Powell for advice on how he uses personal mobile device in his office at the State Department. Which is a secure space for classified information, called the SCIF. So, Ambassador Kennedy, can you explain why diplomatic security does not permit anyone to bring a BlackBerry or cell phone, an iPhone into a secretary's office at the department?

KENNEDY: We operate under the rule -- under rules laid out by the -- by the former director of the CIA, now the director of the Office of National Intelligence. And they -- you do not ingest certain documents into a secure compartment information facility because they may pick up signals and transmit them out.

PLASKETT: Now, Secretary Powell, who everyone I believe in the house would admit is an amazing American, a patriot to this country, describes in this email with Secretary Clinton that the personal -- that he use a personal phone line to set up, he quote "To communicate with a wide range of friends directly without it going through the State Department service." He said he also use that account to do business with foreign leaders and other State Department officials who are using their personal

email accounts.

Now, this is not to say that Secretary Clinton should have done this. What I'm pointing this out to say is that Secretary **Powell**, by his own admission in this email, says that he did this as well. And we know that some very, very serious matters were discussed during his timeframe, which this committee does not seem to be interested in at all. And Secretary **Powell** has given how much of his AOL email accounts to you all during your FOIA request?

KENNEDY: We have received no documents from Secretary **Powell**.

PLASKETT: And I heard Mr. Finney say that there is a directive that if an email is sent from a personal email, if that's related to State Department matters, it should be sent then to a State Department email account.

KENNEDY: That is something that was put into effect in 2014. Prior to the -- after the amendment of the Federal Records Act. The earlier requirement was that if you sent an email from your personal account, you could either copy it to yourself or provide a paper copy.

PLASKETT: And was a paper copy provided by from Secretary **Powell**?

KENNEDY: I'm aware of no paper copy. PLASKETT: No paper copy. And when is this committee going to receive that? And when is the urgency that we seem to have for Secretary Clinton giving us this going to, in fact, be given across the board to the other secretary?

Secretary **Powell** explained that he disregarded diplomatic security. The NSA and the CIA uses personal mobile device in secure State Department spaces. He says and I quote, "And the issue was DS would not allow them into the secure spaces, especially up your way. When I asked why not, they gave me all kinds of nonsense about how they gave out signals and could be read by spies, et cetera. Same reason they tried to keep mobile phones out of the suite."

"They never satisfied me and NSA/CIA wouldn't back off. So, we just went about our business and stopped asking. I had an ancient version of a PDA and used it."

Mr. Kennedy, were you aware that Secretary **Powell** used his PDA into SCIF?

KENNEDY: No, I was not. I was not in this position at that time.

CUMMINGS: Secretary -- are you aware of that now?

KENNEDY: I am aware of it from having read the email.

PLASKETT: Would the secretary, who was in your position at that time, have allowed that to have occurred?

KENNEDY: He would not have.

PLASKETT: Thank you.

MEADOWS: Thank you, Mr. Chairman. I thank each of you for your testimony. I think part of what my colleague opposite is talking about is a double standard. So, certainly if Colin **Powell** has emails that belong and should belong to the federal government, the people of this great country, they need to go -- you need to go after them. You need to request them officially and you need to get them.

I'm her on that. Whether it's Colin **Powell** or Hillary Clinton, they do not belong to those individuals. They belong to the American people.

But let's talk about a double standard because the very email that my colleague opposite just put up actually is an email that she obtained from the State Department in the last couple of days. Isn't correct, Ambassador Kennedy?

KENNEDY: We received a request from the ranking member signed by...

MEADOWS: Seven members, right?

KENNEDY: The seven-member rule. Yes, sir. MEADOWS: So, let me ask you how this happens. Because the double standard that I'm seeing here is an credibly quick response by the State Department when it is responded to the ranking member in defense of this particular hearing. And a slow walk when it comes from the chairman.

And let me give you some examples, because in January of this year the chairman requested information as it related to Hillary Clinton's FOIA request and so for. And it took 40 days to get a performance evaluation on Ms. Lang. That was the only response in 40 days. All right. Do you find that troubling, Ambassador Kennedy?

KENNEDY: No.

MEADOWS: You don't find that troubling?

KENNEDY: No, sir. If I could...

MEADOWS: No, just -- that's good enough. You've responded, so you don't find it troubling. So let me -- let me ask the ranking member, Mr. Cummings, asked for information on Condoleezza Rice and Colin Powell on February 4, you got a full response to him in less than 30 days. Ain't that correct?

KENNEDY: The differences you ask...

(CROSSTALK)

MEADOWS: I didn't ask for the difference.

(CROSSTALK)

KENNEDY: You asked for one -- you ask for one document.

MEADOWS: All right, we'll go there.

KENNEDY: It's very easy to find one document...

MEADOWS: All right.

KENNEDY: But it was 186,000 documents...

(CROSSTALK)

MEADOWS: Fair enough, Ambassador Kennedy. So let's go to the specifics. On September 2, you get a letter from the ranking member asking for Colin Powell's emails between he and Hillary Clinton. I mean, the between Hilary Clinton and Colin Powell, the seven -- supposedly seven-member request on September 2. And five days later, he gets the emails.

Do you find that extraordinarily fast in that there was a FOIA request for that same information that's been outstanding since 2014? So the public asked for it in 2014, the ranking member asked for it five days ago and you got it to him before this hearing. Do you not see a double standard there? KENNEDY: I see two things, congressman. One is we in -- we did -- this is part of the material we just received from the FBI. So we did not have it until last month.

MEADOWS: So there were -- the FOIA request, you sent this information to the person who request the FOIA as well?

KENNEDY: That FOIA -- I don't -- I would have to find out where...

MEADOWS: All right. Because here's the interesting other aspect, you made a caution and I quote, "The department has concerns about the public release of these documents, FOIA markings and redactions reflect the fact that the documents are currently being processed for FOIA and have undergone -- have undergone an initial review."

However, the preparation of these documents for the public release has not yet been completed, but yet they released them. Do you not see a problem with that?

KENNEDY: Mr. Meadows, we try to the best of our ability to respond to committees of Congress. That...

MEADOWS: I -- I -- I...

KENNEDY: That is a -- that is a priority -- that there...

(CROSSTALK)

MEADOWS: But it is with unbelievable speed when it fits the narrative that you want to do. So, here's my request of you, ambassador, I've got two. The chairman asked for a very simple request that's been outstanding for the AP about a calendar, it shouldn't be a hard request. It's not 137,000 pages. Can you respond in the same length of time that you responded to the ranking member in five days?

KENNEDY: The answer to that -- to that, sir, is whether or not there is any information that we have to call out on those calendar...

(CROSSTALK)

MEADOWS: You've been looking at it since 2010 for the AP, I would think that eventually you would be able to do it five days.

KENNEDY: Sir...

MEADOWS: All right. Here's the last because I'm running out of time. Two years ago, I ask you a question in foreign affairs under sworn testimony, was it you or Hillary Rodham Clinton who decided to not publish the bonuses for State Department? Because it has to be one or the other. Either you or Hillary Rodham Clinton.

Two years later, I'm still waiting for a response. I want a direct response. Was it your decision to make sure that bonuses are not public and not transparent or was it hers? I yield back.

CHAFFETZ: We'd like you to answer the question.

KENNEDY: Sorry the time (ph) -- the answer is, sir, that I do not recall the question from you and therefore I humbly apologize. I will get you an answer. My general recollection is there was a decision made government-wide not to publish documents -- not to publish bonuses. But I...

(CROSSTALK)

MEADOWS: Mr. Chairman, to clarify, there is only one of two people who could have made that decision, either you or Hillary Rodham Clinton, who was it? That's what I want to know.

KENNEDY: It's -- it definitely wasn't Secretary Clinton. That kind of -- that kind of decision did not go up to her.

CHAFFETZ: Wait a second, you just said you didn't...

MEADOWS: So you said you don't know, but yet you know it wasn't her? That's the...

(CROSSTALK)

KENNEDY: Yes, because I would never send an issue of that nature to the Secretary of State because the Secretary of State, no matter whether it is George Shultz, Colin Powell or Hillary Rodham Clinton or John Kerry, does not need to deal with an issue of that stature.

CHAFFETZ: All right. Thank you. We'll now recognize the gentlewoman from the district, Eleanor Holmes Norton.

NORTON: Thank you, Mr. Chairman. You know, the words of reform, government reform were in the title to this committee. So I grow weary when we pay gotcha all the time and no reform comes out of the system.

I am very interested in what happened here because I think it does illustrate probably the kind of confusion one might expect in a system that has classified and unclassified. So I'm really looking for what the reformed we can get out of this system and asking you, Ambassador Kennedy, to help me out.

Director Comey for example, testified that there was the 30,000 emails that the secretary have provided to the State Department. Two thousand were later determined to be classified. Now, let me tell you the danger I see in that.

This is after-the-fact -- after-the-fact classification. Now, you know, we always complain about over classification. This isn't that, it's after-the-fact, this is something that should be secret so it shouldn't be shared. But by that time, who knows how many people have had it shared with them.

So I'm trying to come to grips with after-the-fact classification. Do you see a systemic problem when so many members, 2,000, a large number there? If they would be senior foreign service members could have been writing information they believed to be unclassified just to be overturned, god knows when, by lawyer (ph) in which case everybody would say, "Oops, I just didn't know."

And apparently, for those 2,000, at least thousand -- a thousand people were on these emails. Can I ask you what advice does the State Department give its employees about the possibility of retroactive classification? Does it warn them that these emails are not classified now but don't share them because they are subject to being reclassified as classified?

KENNEDY: Congresswoman, you posed a very very salient question. And if I could address it two ways. First of all, there is a large amount of information that State Department receives in the course of its business that we call foreign government information. This is information we get from a foreign government in the course of our diplomatic activities around the world.

NORTON: You mean, all of that wouldn't be classified?

KENNEDY: Not all of it would be classified. Many of that is not given to us in confidence and there is -- there is not a risk of loss of life if the information came out. But it's given to us and we treat it as unclassified foreign...

NORTON: Loss of life, I'm not familiar with that standard.

KENNEDY: Well...

NORTON: What about loss -- what about loss of faith?

KENNEDY: What -- I mean, that's what I'm getting to, ma'am. This information is given to us and we treat it as sensitive but unclassified.

NORTON: As sensitive, does that mean, "Don't share this information."

KENNEDY: Don't share this information.

NORTON: "It could be classified later."

KENNEDY: No. It's sensitive information because it was received often from a foreign source.

(CROSSTALK)

NORTON: And we're only talking about foreign -- are we only talking about foreign source? Were all 2,000 foreign source?

KENNEDY: No, to the vet (ph) we did a little calculation and it's dropped (ph) 2,000 of the 2,100 emails are confidential. We believe that 70 percent of those 2,000, some more or less 1,400 information were classified because they contain foreign government information. If you went to the Department of Defense or the Department of Energy, they have by statute. And the State Department has been asking for a change in the law for several years. Now, we have asked for the ability to declare that material restricted so we can -- do not have to release it to the public. Because as you rightly pointed out, ma'am, it can be an embarrassment. A foreign government gives us...

(CROSSTALK)

NORTON: Sensitive versus restricted, what's the difference?

KENNEDY: It's -- restricted means we would have the authority under the FOIA to not provide that information to the public.

NORTON: Does that mean subject to possible classification?

KENNEDY: No. It just means that it would be exempt from FOIA. And the reason why we have to retroactively...

NORTON: Yes, I'm worried about there being -- yes.

KENNEDY: The reason we have to retroactively classified it is we do not have the same abilities and authorities that the Department of Defense and the Department of Energy can do. They have an ability to say, "This is exempt from FOIA."

We don't have that. If we had that, my ballpark back of the envelope guess is 1,400 of the 2,100 classifications would have disappeared and they would have been available to the Congress, but they -- because of the sensitive nature of foreign government exchange, they would not been available to anyone who reads it. And you obviously all realized that a FOIA request doesn't only go to American citizens. Anybody can make a FOIA request.

NORTON: This is very important, as far as I am concerned. So the reform here, I would take it, would be that what you're doing -- you're being forced to use the classification label.

KENNEDY: Exactly. We need the authority to have a foreign government information exemption. And we have asked for that...

(CROSSTALK)

NORTON: Would this require a statutory change?

KENNEDY: It does require a statutory change.

NORTON: Mr. Chairman, please note that because I do think that is important to know that. I'm not sure the committee knew that. That testimony is important from me and I think it comes out, I think, at a good time when we're trying to find out not only what happened and what to do about it.

Let me ask you finally, have directed the thousand people to do anything to about like for example, deleting this classified information? Remember, retroactively classified from their systems, have you asked them since it's now classified, to make sure it's gone from your system? And indeed, what can you do about it if it's retroactively?

KENNEDY: We take certain steps with the highly classified. But from the -- for the FGI (ph) material, we have not taken that step.

NORTON: Don't you think you can do it (ph)?

KENNEDY: Because those are within in our system. And we...

NORTON: You mean, those cannot be scared anyway?

KENNEDY: We have -- we have now mark them so they were not going to be released to...

NORTON: Could I just ask one, should that be (ph) delete it or not?

KENNEDY: We would not delete them. We would transfer them to another system because we do not delete federal records.

NORTON: Thank you, Mr. Chairman.

CHAFFETZ: thank you. And that's a good takeaway. I appreciate, Ambassador, you're sharing that perspective and driving that home with us. So, thank you again.

We'll now recognize the gentleman from Georgia, Mr. Hice, for five minutes.

HICE: Thank you, Mr. Chairman. Ambassador Jacobs, when responding to a FOIA request, who in the State Department is responsible for determining what is redacted?

JACOBS: Thank you for the question. It is the responsibility of the people who work in our FOIA office, which is in our Bureau of Administration to determine what is redacted.

HICE: Who is the lead person, the head? Where does the buck stop?

JACOBS: It's a number of people who are trained and skilled in the FOIA law who do this. There's not one particular person.

HICE: Could you provide the names of those individuals for us.

JACOBS: I can.

HICE: OK. Is there a specific criteria that they use to determine what is redacted and what's not?

JACOBS: Yes, sir. It's basically the FOIA law, the exemptions that exist under the FOIA law.

HICE: OK. When responding to a request from Congress, who is responsible for determining what is redacted?

JACOBS: There are differing standards that are used for Congress, sir. I think that you get more information than we would release to the public ordinarily.

HICE: I'm not so sure that we do. How is the process different between a FOIA request and a congressional request when it comes to what is redacted and what is not?

JACOBS: I think we are guided by the different agreements, arrangements that we have with Congress. Certainly, for releases to the general public, we follow the FOIA law. And I think with Congress, perhaps there are different procedures

that we follow.

HICE: Do you know what those different procedures are? That's my question.

JACOBS: I'm not exactly sure of all of them. I'd have to get back to you, sir.

HICE: Would you get back with me and clarify that issue?

JACOBS: I will do that.

HICE: You have been really in charge of your role as transparency coordinator in the State Department. Do you believe the State Department is being transparent?

JACOBS: Yes, sir, I do. I think to the best of our ability, we are committed to openness and to -- especially, under FOIA to releasing whenever we can.

HICE: OK. But the question goes beyond FOIA, it goes to congressional requests as well. And is extremely frustrating, you know, just for example I noticed with the FBI, they just released a 58-page summary to the public publicly release the other day. I was scanning through it, I have a copy of it right here.

And listen, I understand, Mr. Chairman, understand fully, when there are potential compromises in our national security, I understand the need for redacted material. That is not even in question honorably (ph) with anyone. But the current process seems so arbitrary and just all over the map where and how reductions take place. And frankly, this is an issue that goes across the entire executive branch. And the questions out there are multiple.

I'm looking right now with the summary that came out the other day. Ms. Clinton's birthday is redacted. I mean, what is -- what is the potential national security threat in that? You can go in Wikipedia and find it. In fact, I did.

KENNEDY: Congressman,...

HICE: That is -- no, sir. If I...

KENNEDY: If I could just ask... (CROSSTALK)

HICE: No, I'm not asking you a question right now, I'm expressing frustration in the whole process. You know, the very next sentence, it mentions Ms. Clinton's five attorneys, four of them by name but one of them is redacted.

There's -- we seem to be all over the map. And quite frankly, the end result appearance at least and I'm not making an accusation, but the absolute appearance is that obstruction is involved. Many times when it comes to what is redacted and what is not.

And how in the world can we do our job of oversight when we're not given the requested information that we need to do our job? Or when what is received is so redacted, it's difficult to determine what has been really given us and what's not being given?

So, Mr. Chairman, I think any reasonable person would frequently look at the material, whether it's through a FOIA request or a congressional request and have great concerns that information that is needed for whatever requested purpose is not being provided accurately. And this, Ambassador Jacobs, raises a question as the transparency of (ph) state, as well as other departments.

And so, Mr. Chairman, I would just -- I hope that we can, not only get the material that we've requested, all of it. But I hope also that transparencies can occur. It is -- it is America that's suffering when we're not allowed to do the job that we've been tasked to do -- to do here in oversight. And with that, Mr. Chairman, I yield back.

CHAFFETZ: Before yield, to the (ph) gentleman yield to me?

(UNKNOWN): Yes, sir.

CHAFFETZ: Ambassador Jacobs, you're heading up the transparency, transparency coordinator. What is it that you believe Congress should not be able to see?

JACOBS: Sir, thanks for the question. I am not completely familiar with all of the agreements and arrangements that we have. I do know...

(CROSSTALK)

CHAFFETZ: But why should there be any agreements and arrangements? What could Congress not see? You were brought in by Secretary Kerry, right? To be the transparency person.

JACOBS: Yes, sir.

CHAFFETZ: So, you're champion of transparency. What is it the Congress should not be able to see.

JACOBS: I think that Congress should have access to all of the information that they are entitled to. I believe that there are certain restrictions that...

(CROSSTALK)

CHAFFETZ: They give you an example. You've been at foreign service for 33, so give me an example of something that I, as the chairman of the oversight committee, or Mr. Hice, should not be able to see?

JACOBS: Highly classified compartmented information perhaps if don't...

CHAFFETZ: Like?

JACOBS: ...have the proper clearance.

CHAFFETZ: With SAP information?

JACOBS: I assume so, unless you have the proper clearance.

CHAFFETZ: What else?

JACOBS: Information related to privacy, you know, personally identifiable information.

CHAFFETZ: No. Sorry, got that one wrong. Sorry. We're not -- the Congress is exempt from the Privacy Act. So try again. What else?

JACOBS: Sir, I really believe that you should have access to whatever information...

CHAFFETZ: But when you get this thing, it's said to us and it's chock-full of redactions. Why?

JACOBS: Is this -- are you referring to information...

(CROSSTALK)

CHAFFETZ: No, you don't need the whispering here. We'll allow y'all to do it. You don't need to kind of whisper in her ear and tell her what the right answer is.

JACOBS: No. The question was whether this was information from the FBI or from the State...

CHAFFETZ: I'm not saying (ph) from the State Department.

JACOBS: OK. I -- what I can do is offer to come up and...

(CROSSTALK)

CHAFFETZ: You're here right now.

JACOBS: I understand, sir. But this is...

CHAFFETZ: Ambassador Kennedy, come on, you've got probably the most experience here. Give me an example. What is it that the Congress should not see?

KENNEDY: I think that not every member of the congressional staff should be entitled and...

(CROSSTALK)

CHAFFETZ: I didn't asked about staff, I said, members of Congress.

KENNEDY: OK. Then, Mr. Chairman, the only thing that I believe is valid, is executive brain -- internal executive branch deliberations leading to a decision.

(CROSSTALK)

CHAFFETZ: And that has...

(CROSSTALK)

KENNEDY: Because that is the prerogative of the Congress to have its deliberations secret and it's a prerogative of the executive branch to arrive at a position and then come up and defend that position wholly and fully before the Congress but not necessarily all the internal puts and takes it went into it before an executive branch decision was made, Sir.

CHAFFETZ: And there is an exhibit -- the president can claim executive privilege, there is a process to do that were the president actually has to sign a document invoking that executive privilege. Mr. Cummings.

CUMMINGS: Just real quick. Ambassador Kennedy, I'm just curious about something Mr. Hice just asked. Why would a birthday be redacted? I'm just curious.

KENNEDY: Private...

CUMMINGS: You will try to answer that and I would just -- wonder what you would say.

KENNEDY: Yes, Sir. We think that names of spouses, names of children, birth date, Social Security numbers, that information is not necessary for the conduct of any business. And there is always the possibility of spillage. I'm not accusing any member of Congress or any staff member but we desperately try to make sure that information is protected under the privacy act is used only on an absolute need to know.

CHAFFETZ: The privacy act does not apply to Congress, and what you are doing is you are conflating FOIA with congressional requests. We have a skiff. We deal with classified information. We have exhausted this for right now -- let's now recognize the gentlewoman from New York, Ms. Maloney.

MALONEY: Thank you, Mr. Chairman and Mr. Ranking Member. I would say that what this hearing shows very clearly is that, the classification system is broken and it needs to be reformed. This is something we could work together on a bipartisan way and in fact, I will introduce this week. A sense of Congress that the classification system needs to be reviewed and needs to be reformed.

I have here an email that the State Department marks as sense of sensitive but unclassified clearly calls it unclassified calls it unclassified at the top and at the bottom and yet, the FBI called it classified.

Now, there's clearly something wrong here. Now, this memo was a memo written by a senior diplomat, a Jeffrey Feldman and he was the assistant secretary for the Bureau of near Eastern affairs. A senior diplomat it is just personal email and he calls each paragraph that he wrote SBU which stands for Sensitive But Unclassified.

Now, if you look at the State Department's foreign affairs manual it clearly says sensitive but unclassified information is and I quote, not classified so I would like to ask you, Mr. Kennedy if you received this from a senior diplomat whose judgment you trust, and he marks unclassified at the top at the bottom, and four other times in the body of the document. Would you think the document is unclassified?

KENNEDY: I think the document is unclassified, but Congresswoman if I received a FOIA request and the text contained foreign government information that had been shared with us in confidence I would not wish it releasable...

(CROSSTALK)

MALONEY: We heard that.

KENNEDY: And that is the underpinning of our discussion, Ma'am.

MALONEY: We hear that. The Chairman hears it. We're going to work on it. But my point is there is something clearly wrong with the system, where an individual is charged with criminal activity, because they received a document. This marked unclassified, unclassified, unclassified and then the FBI comes in and says, oh, it's classified.

So the whole system of classification, in my opinion needs desperately to be reformed and I would say that every member of this panel on the Republican and Democratic side. If we receive this memo we would think it is unclassified because that's what it stamped but this was part of what the FBI called classified at the time and I see this is something that needs to be corrected and it needs to be reformed.

KENNEDY: If I could, I fully and absolutely agree with you and that is why we have been for years seeking the ability for a FOIA exemption that would permit us to make foreign government information exempt.

MALONEY: We heard what you said but my point that I'm making right now, although that's an important one is that this system is fundamentally flawed. When an individual in this case, Secretary Clinton received an email like this one and is accused of criminal activity for relying on the judgment of an experienced diplomat that is trusted by the State Department.

KENNEDY: I fully agree with you on that.

MALONEY: And I feel that is really outrageous. I would say it's an abuse of power. It's wrong and it needs to be changed. And we are the government reform committee. We should start working on it right now.

It is explicitly designated and let's say, one, two, three, four, five, six places as unclassified and now the FBI is saying that is classified, Mr. Chairman, I ask unanimous consent to place this document in the in the record.

I think it is a strong example of a system that is broken, is not working is hurting our government, misleading people, inappropriate and just plain wrong. My question is, why haven't you reformed this before?

KENNEDY: Because we have been seeking. We have been seeking for multiple years a statutory change that would give us

the same authorities that the Department of Defense and the Department of Energy have so this would not have been classified. It would have been marked exempt from public release under...

MALONEY: OK. But clearly right now it is marked as classified by the FBI, the State Department is marking it unclassified.

KENNEDY: No, no. We -- the State Department was forced, was forced to mark this classified into order to preclude public release to the entire world.

MALONEY: But Sir, my point is, it is marked one, two, three, four, five, six times as unclassified. If I was working for Secretary Clinton, I would have handed her this document and said, Madam Secretary. It is marked unclassified see, it's unclassified, unclassified, unclassified and now because of this quirk which needs to be corrected. It's now, a quote, criminal activity.

There is something terribly wrong with the system and I believe that you should have worked in the most earnest way to have changed this and stopped. I consider this as an abuse.

(CROSSTALK)

CHAFFETZ: I fully I fully agree with you. And that is why...

(CROSSTALK)

MALONEY: It is that is flawed system...

CHAFFETZ: Gentlewoman...

(CROSSTALK)

MALONEY: That claims that this is a liminal activity. It's wrong. CHAFFETZ: Gentlewoman's time has expired.

KENNEDY: I'm finished.

CHAFFETZ: OK. Let's move on. You asked for unanimous consent, without objection so ordered that will be entered into the record. Let's now recognize the gentleman from Texas, Mr. Farenthold.

FARENTHOLD: Thank you very much. Ambassador, can a -- Secretary Clinton said only can -- she had only had convenience in mind when choosing to use a personal email account. Has this been convenient for state to respond to the FBI?

KENNEDY: I'm sorry. I don't quite understand the question.

FARENTHOLD: Was it convenient -- because of Secretary Clinton use of a private emails account for her email that she said she used it for convenience, maybe in her convenience was it convenient for the State Department to comply with the FBI inquiry because she did this?

KENNEDY: We would have had to review her documents were in for public release under FOIA whether or not she had used one server or another server.

FARENTHOLD: So how did Secretary Clinton's emails from her private server get delivered to the State Department? Did she send you a copy of the PDF file? Did she send you or the PST files from Outlook? How do they come to the State Department?

KENNEDY: We received approximately 55,000 pages in hard copy, Sir.

FARENTHOLD: So the fact that she didn't there were on any of your servers that came on hardcopy. So you had to scan them I guess.

KENNEDY: We have not we have a system that we use for our processing document.

FARENTHOLD: So it -- but it certainly would have been a whole lot more convenient and less expensive for the taxpayer had she been on the State Department servers. Would you agree with that?

KENNEDY: If they had been available to us electronically, we would not have had to scan them, yes, Sir.

FARENTHOLD: And the State Department uses something called smart can you tell me about the state messaging archiving and retrieval toolset?

KENNEDY: Yes, Sir. Smart is a tool that we had developed. It was an early attempt to come up with a system that would make archiving and retrieval easier. It had -- it was something that was never fully adopted because it has significant flaws to it. That is one of the things that Ambassador Jacobs and a team that works for me have been working on to put into place a new system that would replace smart because it did not -- it was good but it was not successful. FARENTHOLD: But now because Secretary Clinton's emails were not outsmarted ended up taking more time being less convenient and was more expensive, is that not correct?

KENNEDY: No, Sir. The executive Secretariat did not adopt smart and did not adopted before Secretary Clinton's tenure. So that the decision of not having her emails -- her emails would not have been on Smart even if they were in our system because of the inadequacies of the smart system and that was not her choice. It was the previous executive Secretariat.

FARENTHOLD: All right. So, let's go to Ambassador Jacobs, you know, we're talking -- we heard lots of testimony today about how much time and money responding to all these requests have taken. It seemed by coming up with the system to do that efficiently would be a priority. Where are we -- and I mean, it sounds like you budgeted gone up your production is gone down I mean, it seemed like we're in a lose position right now.

JACOBS: Thank you for the question. Thank you for giving me an opportunity to talk a little bit about some of the changes that we are making that I think are going to make us much more efficient and effective.

One is the whole email, the use of email is something that not just the State Department that I think other federal agencies have struggled with as to the amount of emails and how to capture them and store them. We are -- we the State Department all federal agencies are under a mandate issued by the national archives and OMB to capture and manage all of our email traffic by the end of this year, December 31st 2016.

To do that we are first of all you heard earlier about the capstone approach, which was approved by NARA for capturing all of the email...

(CROSSTALK)

FARENTHOLD: So, where you -- again, I have a limited time. Where y'all implementing in it. Are you going to get there and when is this going to get better?

JACOBS: We are, Sir. We are going to meet the December 2016 deadline. I'm happy to say. We are capturing all those emails. We are going to capture the emails of other people and we're acquiring new technology that will allow us to search, said email.

FARENTHOLD: All right. And finally, have we learned a lesson that they were not going to let future secretaries of state or high- ranking officials use private email servers. Are we going to keep them on a government server where we can manage them?

JACOBS: Sir, we have taken several measures to make sure that that happens.

FARENTHOLD: You agree with that Ambassador Kennedy? KENNEDY: Absolutely, Sir.

FARENTHOLD: All right. Now, I yield back the remainder of my time.

CHAFFETZ: You have one other point?

KENNEDY: You're absolutely correct Sir that we have managed to squeeze additional funds and place them in FOIA including for the sum of the equipment that Ambassador Jacobs is talking about. However, as we have been increasing the budget the demand is up over 200 percent.

We are now receiving 30,000 FOIA request -- we have 30,000 FOIA request pending in -- the number of people asking for material keeps going up. So we -- that's why that is another reason why we are very committed to getting this done.

FARENTHOLD: It's actually assuring that the numbers going up and makes me glad more people are concerned about how their government operates in the increase transparency throughout the nation's capital in our government is a good thing.

CHAFFETZ: If the gentleman yields back and point out though that 2008 the State Department is spending about \$400,000 in lawsuits. Now, they are spending about \$4 million in lawsuit. So it is duplicitous to say we're trying to say they were trying to open up the openness and transparency at the same time you are in federal court fighting, arguing not to release information that is owned by the public.

KENNEDY: Mr. Chairman...

CHAFFETZ: Now, we're going to recognize the gentleman from Oklahoma, Mr. Russell now for five minutes.

RUSSELL: Thank you Mr. Chairman and thank you all for you for being here today. We do appreciate your long service to our country. Ambassador Kennedy, do you believe that Congress has a responsibility to hold the government accountable?

KENNEDY: Absolutely.

RUSSELL: OK. Do you believe that government agencies should withhold information from Congress either classified or handled secretly in our classified bolts or unclassified information that would be handled by our committees?

KENNEDY: I am not in control of special...

(CROSSTALK)

RUSSELL: But it is important that someone with your dedicated decades of service and ambassadorial level you have handle a lot of classified information...

(CROSSTALK) KENNEDY: I'm always prepared to share classified information with the Congress but I know that...

(CROSSTALK)

RUSSELL: And we appreciate that.

KENNEDY: I know that under the rules of the House and Senate. It's House and Senate rules that they give the Senate select committee and the House permanent select committee on intelligence privileges that are not available to others. And so I cannot jump over House and Senate.

RUSSELL: And I think we're all in violent agreement on that but it is important that those select committees have information. If what I have read in the vaults regarding Mrs. Clinton's mishandling of classified information were known to the American people, as I have been in the vaults to peruse them, the American public would be absolutely uphold. But we

can't talk about that.

Instead of focusing on this mishandling and its subsequent obfuscation by Mrs. Clinton by members of her personal staff, the Department of State and by her attorneys, we are now seeing a typical plate admit nothing, deny everything, make counter accusation.

Take the case of Secretary **Powell** listening today, one would think that he was somehow doing what was just normal for secretaries of state in the State Department by not securing things or not being in a proper closed-loop with State Department communication.

When reality is General **Powell** all so the truth is and I'm quoting. She was using the private email server a year before I even sent her a memo.

He also states and statements that he had no recollection of a dinner conversation advising her to take such actions to circumvent anything but it does bring up some questions so let me ask you, Ambassador Kennedy, did Secretary **Powell** use a dozen and a half devices and made nearly all of them disappear, and destroy some with hammers?

KENNEDY: I'm not aware, Sir...

(CROSSTALK)

RUSSELL: OK. Did...

(CROSSTALK)

KENNEDY: ...of Secretary **Powell** -- what Secretary **Powell** did or did not do it...

(CROSSTALK)

RUSSELL: OK. Did Secretary **Powell** or his proxies use bleaching software to eliminate any trace of federal records on separate servers after they had been requested.

KENNEDY: I'm aware I am not aware of Secretary **Powell's** practice...

(CROSSTALK)

RUSSELL: I'm not either. As to classified information well, did Secretary **Powell** keep or provide private servers for any email communication?

KENNEDY: I do -- I know that Secretary **Powell**...

(CROSSTALK)

RUSSELL: Not a private email account like Yahoo or anything or AOL. We're talking private servers.

KENNEDY: I do not see a difference...

(CROSSTALK)

RUSSELL: OK. I don't either. I think were in the same conclusion. As to classified information, how is it that the Department of State staff which are very able and the FBI, which are also very able were able to determine what top-secret special access program information was enough so to withhold it from Congress.

And yet somehow we are to believe that Mrs. Clinton was somehow not intelligent enough to discern the difference between

special access program information or not.

How is it the State Department with all of their experience in the FBI with all of errors were somehow better qualified than someone who had been a United States senator someone who had been, say, a Secretary of State, how is it possible?

KENNEDY: To answer that question, Sir, we would have to be in another forum.

RUSSELL: And we will and so we'll get to ask it again. And let me ask you, in your experience, which I greatly admire by the way, Sir administration to administration. I served decades in the military I held a top secret special compartmentalized classification in the military. I know how to handle sensitive information. I know you do too.

Did you ever in your career experience that was appropriate to cut and paste from a classified setting whether it was marked anything but to cut and paste from a classified setting and to paste that information to an unclassified setting, would that be a practice that the State Department under any set of rules would be appropriate.

KENNEDY: It is not sir, but I have seen in all material that I reviewed. No evidence, nor did the inspector general or the FBI find that the Secretary of State, former Secretary Clinton did so. RUSSELL: Well then we will have in the classified setting maybe some further questions to ask. This is what is exasperating since 1814, we the people empower the government which we draw our power from the consent of the governed to uphold the Constitution of United States. I've been doing it since I was 18 now in a different capacity. We have a responsibility for oversight and we must not exasperate the American people.

They can see what is clearly understood and yet we play these delayed games admit nothing, deny everything, make counter accusations put her left hurdle so that the clock will somehow run out. Oversight is infinitely important and we must provide that information and with that Mr. Chairman, I will yield back. Thank you.

KENNEDY: May I respond?

CHAFFETZ: No, we got to keep the pace going here. We'll now recognize gentleman from Alabama, Mr. Palmer.

PALMER: Thank you, Mr. Chairman. Ambassador Kennedy for you requires an escort and offices, but a FOIA requires a response within 20 days. Secretary of State's office on multiple occasions has taken more than 500 days to respond.

While there is response for federal agencies across the government for a simple request is 20.5 days the State Department's averages 91 days. For a complex request the government wide average was a 119 days. The State Department average is 535 days. What do you believe is a reasonable amount of time to respond to this FOIA request?

KENNEDY: Sir, obviously we want to go faster, but there is a significant problem here. We have -- we used to get maybe 10,000 FOIA requests a year. We are now this year will have a backlog of 30,000. I have poured additional resources into it. I -- we have gone from some 64 people to 93 and depending on the budget for FY '17, I'll push it under 118...

(CROSSTALK)

PALMER: Do you prioritize request? For instance, when you received your request for producing a calendar, is that a simple or complex case and I know...

(CROSSTALK)

KENNEDY: In order to court order to be responsive to the Freedom of Information Act as we interpreted we use FIFO first in first out.

PALMER: So...

(CROSSTALK)

PALMER: It could have been interpret -- would this event a freedom of information request for the calendars?

KENNEDY: If we request the calendars?

PALMER: No...

(CROSSTALK)

KENNEDY: There are two separate strains. There is congressional document requests and the request under the Freedom of Information Act and the privacy act one or public request one or for from the run from the Congress and as I responded earlier to the chairman, we will engage as soon as I get back this afternoon on the subject. We have...

(CROSSTALK)

PALMER: How long do you think that will take?

KENNEDY: I have to -- I do not -- I know we are partially through the Associated Press request.

PALMER: I just ask a request if the chairman asked for the calendars, how long will it take to get down?

KENNEDY: I have to find out how many more have to be processed.

PALMER: How many more what?

KENNEDY: We at least as is a courtesy as part of the agreement we mark documents to the Congress about whether or not there public release would be detrimental...

(CROSSTALK)

PALMER: This is just a calendar.

KENNEDY: If the Secretary of State was having a meeting a sensitive meeting with a foreign government of fig...

(CROSSTALK)

PALMER: She's not there anymore.

KENNEDY: The existence of that meeting, Sir could be dispositive. Along the lines of activities, that Secretary Kerry is carrying on. I'm not talking about Sir, we clear withholding information from you. We have to process it so that you know what we consider sensitive as supposed to...

(CROSSTALK)

PALMER: Let me move to something else. According the Inspector General's office, the State Department has previously reported that certain records did not exist only delay report that they actually do. Mr. Finney is your responsibility to ensure that the historical record is complete, is that an accurate assessment?

FINNEY: Yes, Sir for the office of the Secretary. PALMER: And I believe that you do that you do a good job at that. I believe that you make a professional and honest effort to do that. Does it concern you that you do not have all Secretary Clinton's records?

FINNEY: Sir, it always concerns me is source making sure they were taken care of getting the records for the archives for the State Department.

PALMER: Do you think you have all of her records?

FINNEY: Sir. I have all that has been given to us and that is what reprocessing.

PALMER: Are you aware that records have not been given to you?

FINNEY: Sir, all I have is what we have been giving.

PALMER: I'm asking though, are you aware that there are records that have not been given to you?

FINNEY: No, sir. All I have is what we've been...

(CROSSTALK)

PALMER: Are you aware that there is a missing laptop and external storage device?

FINNEY: No sir.

PALMER: Well there is in the response that I believe that came from the Secretary's offices is correct? Mr. Chairman, you can -- if this is incorrect, you can correct me, but they said it was lost in the mail and I would assume that this laptop contains information that should be in the record.

It was a State Department laptop state department external drive what I like to know is if it was lost in the mail. Did anyone make any attempt to file late I lost parcel claim with the post office?

FINNEY: Sir, I don't have any information on that at all.

PALMER: Well, I like to find out if I may Mr. Kennedy.

KENNEDY: If I Mr. Palmer, to the best of my recollection, piecing your question to my knowledge, is the laptop in question was not a State Department laptop. It was not State Department property and therefore we do not know what was personal information on it or not but that also respond here.

PALMER: Here is the reason we are here is because she was using non-State Department software, not State Department servers, not State Department communications devices, many of which was destroyed, some of the electronic documents were bleached so that there is they are not recoverable and you got a laptop and an external storage device that is missing the claims lost in the mail. And I just like to know if there is any effort made to recover it because if it's a pattern and I cannot help but these a little bit skeptical about what is coming from the State Department and from former Secretary Clinton about their willingness to provide information has been requested.

KENNEDY: If I might, Sir. The FBI's been turning over additional information that we -- they have recovered from servers from duplicates. But we're are in the process now of going through that material, we now in the process of the first disc which we understand contain about 14,900 pages, so we are going through that.

We are committed to making sure that the federal archives are whole, and we will process the 14,900 and then the FBI is given us additional disk material that they have recovered from backups and we will do those as well and then make the records available.

PALMER: My time is expired, but the last thing I would ask you to do this, I would like you, even though it was not a State Department laptop not State Department external storage device. I would like you to do the due diligence necessary in this Mr. Finney if you have a role in this as well to try to find out what happened to that laptop and whether not there was an effort to recover from the post office. If in fact it was actually lost in the mail. I yield back.

CHAFFETZ: Thank the gentleman. I will now recognize Mr. Carter of Georgia.

CARTER: Thank you, Mr. Chairman and thank all of you for being here today. Mr. Finney, I want to start with you and I just want to make sure I understand exactly your title when you roll your title is Deputy Director for correspondence records and staffing division, is that correct?

FINNEY: That is correct, Sir.

CARTER: And you have the responsibility of conducting coordinating FOIA searches and in response to FOIA request?

FINNEY: That is correct for the office of the secretary.

CARTER: For the office for the Secretary of State. Mr. Finney, according to a deposition that was given by Karen Lang by judicial watch your office was under the belief that that then Secretary Hillary Clinton did not use email for work related purposes in your office was not aware of this email use until according to sworn testimony 2013 is that pretty much right?

FINNEY: Out of specific dates, but that's is correct, Sir.

CARTER: OK. During Secretary Clinton's tenure as Secretary of State. Did you know she was using a private email for related purposes?

FINNEY: No Sir. CARTER: You did not know that?

FINNEY: No Sir.

CARTER: According to the State Department IG report, there were dozens of people who knew about it. They knew that Secretary Clinton was using a personal email account and they knew that she was using a personal server for work but you didn't and according to your title, it would appear to me that you should have known why do you think they didn't tell you?

FINNEY: Sir, I couldn't give any information of the reason why Sir. I just don't not have that information.

CARTER: Did you ever ask if Secretary Clinton was using a personal email?

FINNEY: No Sir, the question I asked was when she came on board and even after we saw the picture on the news was does she have a state.gov account and when he told she did not that's where stop, Sir.

CARTER: So what does it mean that she doesn't have a state.gov account?

FINNEY: When she does not state.gov account basically, we're just looking at as far as the counselor be able to do emails that assigned to the actual SRA which is are all information resource management accounts who creates those accounts.

CARTER: Did that concern you the fact that she did not have one?

FINNEY: No Sir and the reason why is because when I asked the question and I said and I was told that I do not do she did not have a state.gov account but are Secretary did not house state.gov account as well as the previous ones well so you look at Secretary Rice, Secretary **Powell** and Secretary Clinton did not have a state.gov account. So when they to me that...

(CROSSTALK)

CARTER: OK.

FINNEY: That's when I said, OK. I understand.

CARTER: OK. It's has been established that obviously Secretary Clinton was using a personal email account to conduct official business. Did you know this?

FINNEY: No Sir.

CARTER: Did anyone else know it?

FINNEY: I can answer that question, Sir. No -- what I know -- and I did know.

CARTER: The fact that she was using that personal email should you have known it? Should you have been made aware by your superiors?

FINNEY: Can I refer to our Director?

CARTER: No.

FINNEY: OK.

CARTER: I want to know from you. I want to know in your position that you accepted did you feel like you should have known.

FINNEY: She used me state.gov, or a Gmail account?

CARTER: A Gmail account.

FINNEY: OK. I would say what we do today and a standard is basically as we briefed the folks as we do today based on the Federal Records Act of 2014. If you're using your personal device, you are required by the law to make sure that is sent to your state.gov account. And that's what we would share.

CARTER: So you do believe that you should have known. And you're -- the deputy director of correspondence, records and staffing division when FOIA request come in is your responsibility. You should have known that, correct?

FINNEY: What I suppose be known is making sure that I have captured all the records for the secretary. So again, when I conduct our briefing with the agency records officer we're making sure that we get all the records. So that's what we're staying.

CARTER: So, you need -- in order to fulfill your responsibility. You would have had -- have known, isn't that correct? Now, Ms. Lang, I'm asking Mr. Finney, in and that the way you understand your responsibility?

FINNEY: To fulfill my responsibilities, I'm responsible for making sure that I could do records for the office of the secretary. And so, that's one of the things when we brief we'll make sure that we get those records.

CARTER: OK. Mr. Finney, it's obvious to me that you take great pride in your work and I think you're an exemplary public servant. But it's got to concern you that you weren't given all the tools to perform your responsibility. It would mean if I weren't given all my tools that I needed to perform my responsibility, does that concern you at -- do you feel like they were hiding something from you?

FINNEY: Sir, all I can say is, this is -- that what my job is to make sure I collect all those records and so when I was going to...

(CROSSTALK)

CARTER: But in order to do that job, you have got to know when you did not know, because they didn't tell you, even though they did know. FINNEY: Again, I can say what -- all the folks know I can only tell you what I knew and I didn't know that. So again, it's me going forth to do my job, my job...

(CROSSTALK)

CARTER: OK. One last question, OK, Mr. Finney, do you think that they purposefully didn't tell you?

FINNEY: No, Sir.

CARTER: You don't?

FINNEY: No, Sir.

CARTER: You know, it's just bothersome to me that you and this responsibility as being deputy director for correspondence, records and staffing and in having the responsibility of filling for your request yet you didn't know -- how can you perform your responsibility? And yet other did know and they knew that, that was your responsibility.

FINNEY: Again Sir, I couldn't tell you what they knew. All I can tell you what I knew and when they knew about that I couldn't speculate.

CARTER: OK. Mr. Chairman. I've run out of time. Thank you again Mr. Kennedy for your service.

CHAFFETZ: Thank you gentleman. I now recognize the gentleman from Wisconsin, Mr. Grothman for five minutes.

GROTHMAN: Sure. Couple of questions for Mr. Kennedy. Did you ever have a chance to talk...

(CROSSTALK)

CHAFFETZ: Use your mike...

GROTHMAN: ...and talk to Secretary Clinton about freedom of information requests regarding other things did this ever come up at all during your tenure?

KENNEDY: No sir. No, in order to come up Undersecretary Rice's tenure or when I was Executive Director of the Secretariat for Secretaries Baker and Shultz. This is handled by a special office who is -- can led by very competent people.

GROTHMAN: Never talked about?

KENNEDY: No, Sir.

GROTHMAN: Do you ever meet Ms. Clinton?

KENNEDY: Every morning, Sir when she was in town. GROTHMAN: So all those times. There was never some other freedom of information request that you felt was interesting enough that you didn't mentioned?

KENNEDY: Sir, I did not handle daily Freedom of Information Act request, we have very, very professional staff who do that. I responded, I received Freedom of Information Act request, they were brought to me about records I might have. I responded to them.

GROTHMAN: OK. Any one of the other three of you will be at Secretary Clinton or Secretary Kerry ever had any discussion at all with regard to Freedom of Information requests.

KENNEDY: We -- I certainly -- we certainly had a number of them general sub...

(CROSSTALK)

GROTHMAN: Not you, the other three. You said you've never talked about.

KENNEDY: You added Secretary Kerry, so I was...

(CROSSTALK)

GROTHMAN: Yes. The other three of you?

LANG: Sir, I did have a conversation with Secretary Kerry about records preservation and FOIA processing when I was asked to do this job. And certainly can tell you that he has a great interest in looking into our procedures and practices to try to...

(CROSSTALK)

GROTHMAN: Any of the other -- and I'm not sure how long were the others have you in your current office when Ms. Clinton was Secretary of State or in the department.

LANG: I was in the department, sir, but I was not in my current position when Secretary Clinton was in office.

GROTHMAN: Do you have any interactions whether about Freedom of Information request?

LANG: No, sir.

GROTHMAN: OK. Mr. Finney?

FINNEY: No, Sir.

GROTHMAN: OK. In Ms. Lang's, and this is for Mr. Kennedy again, in Ms. Lang's deposition, she states the only way that the state would have known if Secretary Clinton, evident turnover emails responsible -- response of their press would be their statements on the topic. Is that true? Your kind of just at the mercy of her own statements as to whether everything was turned over? KENNEDY: Currently Sir, that there's three kinds of records in the State Department. There are there what we called paper records, memorandums, there are telegraphic records in their email records.

The telegraphic records in the -- and the paper records are maintained centrally and that is what we were doing now as Ambassador Jacobs has outlined, both with this capstone program and the other new program. We're going to have in place by December 31st. That we will have all records captured.

GROTHMAN: OK. Well, obviously you don't know if you have all records captured because a lot of these records were destroyed, correct?

KENNEDY: I'm talking about -- I thought your question was about the present time by putting the system in, you will not be...

(CROSSTALK)

GROTHMAN: But the question is...

(CROSSTALK)

KENNEDY: ...you will not be able to destroy an email records because the mission -- it goes to your machine and it goes to a central repository and it's -- and you -- and you cannot extract it.

GROTHMAN: There was nothing at the time though, nothing in place to make sure that these records were maintained at the time Secretary Clinton was secretary?

KENNEDY: Prior 2014 in the change of the Federal Records Act and the new NARA standards that was not a requirement then. But as I said, if I might quickly, Sir I know your time -- there we have not ever talked in this hearing today about there are really two major sources of records in the State Department.

That the memorandum records and the telegraphic records, those are centrally archived and they are always locked in and lockdown.

GROTHMAN: Well, I think given, you know, our concerns, our special concerns with regard to Secretary Clinton, I think the most important records are the records that show correspondence with her and people outside the building or outside the department, right?

KENNEDY: Many of those, Sir, are in our telegraphic and are on our paper archives. And I say paper archives, they are electronically maintained.

GROTHMAN: I mean, the emails that she would have had going back and forth with people outside the building.

KENNEDY: There is no question, Sir, that we needed to improve our records maintenance. We're now up to one billion...

(CROSSTALK) GROTHMAN: OK.

KENNEDY: ...emails per year and that is a huge challenge. And we are meeting it.

GROTHMAN: I'll give you one more question, and it would seem to me that some FOIA requests are more important. I don't mean to say it but it's just true. And obviously, when it deals with the secretary themselves and particularly as secretary who -- it turns out, had such huge financial dealings or financial dealings that concern her and her immediate family.

Don't you feel it may be in responding to these requests. You want to make sure that request directly affecting the secretary should double the top?

KENNEDY: That is very hard to do, Sir. When per statute I have to respond to every single FOIA request within 20 days. And so in order to avoid more lawsuits we treat these things as first and in first out and then we're at least able to assert to the courts that we are trying to move through this in a logical and measured progression.

CHAFFETZ: Thank you. We're almost done. So I have just a few more questions. Mr. Ambassador Kennedy, when was the first time you knew that Secretary Clinton used a personal email address?

KENNEDY: I think that...

(CROSSTALK)

CHAFFETZ: Your microphone please.

KENNEDY: That came very, very late in the process Mr. Chairman. I think it came to me, probably in 2014.

CHAFFETZ: The State Department Inspector General report says that in August of 2011 you discussed in an email with Cheryl Mills and others that Secretary's Blackberry wasn't functioning quote, possibly because her personal email server is down, end quote. That raised any red flags for you?

KENNEDY: None whatsoever. I knew that Secretary Clinton had a personal Blackberry. In fact, I had been asked. She did ask about personal Blackberries and I was told that she had a personal Blackberry for keeping in touch with her family. So I was aware she had a personal Blackberry.

CHAFFETZ: What about personal email server?

KENNEDY: I -- that -- if I remember the exact email, you're referring to, Mr. Chairman, that was in there but the main reason I was on that was regarding a failure of the -- her telephone system.

I have been working on the telephone system and this email came back talking about the telephone system and something about the server and I admittedly never focused on that because I was desperately working to make sure that her classified and unclassified phone systems were restored.

CHAFFETZ: You received emails from her personal account?

KENNEDY: Sure.

CHAFFETZ: You never noticed that during her entire tenure that she was in the state?

KENNEDY: I received over a four-year period, you know, a few dozen exchanges with Secretary. That was very, very small number and since I had never received an email from Secretary Albright, Secretary Powell...

(CROSSTALK)

CHAFFETZ: I'm not talking about anybody but Secretary Clinton at this moment.

KENNEDY: But for context, Mr. Chairman receiving a few emails, many of them related to things that she was asked at cocktail party or ask on a weekend, including how to -- who can I put someone in contact...

(CROSSTALK)

CHAFFETZ: OK. So let's go...

(CROSSTALK)

KENNEDY: ...services. It did not strike me as abnormal to get an email from the Secretary of State in the evening or on a weekend from her personal Blackberry.

CHAFFETZ: From her personal email or personal Blackberry?

KENNEDY: I knew she had a Blackberry.

CHAFFETZ: I asked about her email.

KENNEDY: The Blackberry. She was -- that's how she sent email on her Blackberry.

CHAFFETZ: I understand that's the device. I'm talking about the email and the email address. This is a .com.

KENNEDY: I think that's comes on a Blackberry, Sir too. You can get that...

(CROSSTALK)

CHAFFETZ: I want to be precise here. You can have a Blackberry that had a .gov account.

KENNEDY: And you can have a Blackberry that has a .com or a .org or .edu, Sir. CHAFFETZ: Yes. And so the question I'm asking you isn't about the Blackberry. I know that was problematic. I'm asking you about her -- you sending and receiving emails interacting with the Secretary of State on official business.

I have one here for instance from December 22nd, from HDR22@clintone-mail.com to you and a couple others. I mean I've got chockfull of examples where you're going back and forth on official business. You -- her using a .com and you never

noticed that?

KENNEDY: No. I didn't say that Mr. Chairman at all. I said...

(CROSSTALK)

CHAFFETZ: You said, you're first aware in 2014. She already left office.

KENNEDY: When she had a personal email server.

CHAFFETZ: I'm asking you -- there are servers, there are devices and there's email. I'm talking about her email address.

KENNEDY: As I said...

(CROSSTALK)

CHAFFETZ: Don't conflate them.

KENNEDY: As I said a minute ago, Mr. Chairman, I said that I had probably three dozen exchanges with the Secretary over 48 months that we're with her personal. I have admitted to that.

CHAFFETZ: Her personal what?

KENNEDY: Her personal email address or personal Blackberry.

CHAFFETZ: And that didn't raise any flags. You never noticed that.

KENNEDY: I admitted I noticed it but I did not find it consequential. The small number of emails over 48 months when I never received any emails. If I had gotten hundreds and hundreds of emails from her. I would have taken...

(CROSSTALK)

CHAFFETZ: So what's the threshold where you raised the flag, don't you know that on official business you're not supposed to be using a .com address?

KENNEDY: That -- the rules in place during Secretary's tenure is that you could either print off a copy of it or you could send it to your personal storage device somewhere and so she was -- I had no reason to know that these were not being recorded somewhere. I had no reason to know. CHAFFETZ: I think you did. I think this is one of the big errors in all this is because nobody spoke up and said that -- in fact, let me go back. There were some people that spoke up and said this. There were some people that -- to question it, and they were told not to question again and that's in the record.

My time is short here. Let me ask you Ambassador. Monica Hanley explained to the -- explain to me the role that Monica Hanley's role played with Secretary Clinton?

KENNEDY: Monica Hanley was part of this -- sort of a cross between scheduling and advance worked on the Secretary's travel and moved with her when she went to events outside the building.

CHAFFETZ: She was a personal assistant to the Secretary?

KENNEDY: A variety of responses.

CHAFFETZ: Did she still work at the State Department?

KENNEDY: No Sir, she does not.

CHAFFETZ: Do you recall when she left the State Department?

KENNEDY: When Secretary Clinton left she was a non-career employee.

CHAFFETZ: And let me ask you switching gears here. Is it legal or illegal to share classified information with somebody who does not have a security clearance?

KENNEDY: It is inappropriate I believe, it may be illegal as well. I'm not a lawyer.

CHAFFETZ: Would it concern you that if somebody had access to classified information who did not have a proper security clearance?

KENNEDY: Thank you.

CHAFFETZ: Did Monica Hanley lose her security clearance when she left the employment of the State Department?

KENNEDY: Yes.

CHAFFETZ: Is that the regular routine when people leave the employment of the State Department. They should lose their security clearances?

KENNEDY: They don't if I could say, Sir. The security clearances are not lost.

CHAFFETZ: They don't have them anymore...

(CROSSTALK)

KENNEDY: They no longer have one. CHAFFETZ: Fair enough. Yes.

KENNEDY: A loss is that the administrative action.

CHAFFETZ: Agreed.

KENNEDY: Termination of your employment, terminate your access to classified information with some exceptions.

CHAFFETZ: The -- what -- do you ever recall what level of clearance Monica Hanley had while she was at the State Department?

KENNEDY: Been top-secret, Sir.

CHAFFETZ: Could you provide to this committee the time that she had the security clearance and when she -- her security clearance was taken away. Is that fair?

KENNEDY: Her security clearance was never taken away. It ended with her and employment.

CHAFFETZ: Sorry. Security and the time that her security clearance ended.

KENNEDY: We can provide...

(CROSSTALK)

CHAFFETZ: I just like to know what level of security clearance that she had along the way. Did the State Department any have -- any official relationship with the Clinton foundation?

KENNEDY: I don't believe it. I would have to check and I would have to -- I don't think it had an official relationship. We don't usually have official relationships with foundations. We deal extensively with huge numbers of charitable foundation. So, exclusively.

(CROSSTALK)

CHAFFETZ: There is no relationship in your understanding between the Clinton foundation and the State Department to provide services or products or personnel for this -- for the Secretary to do her official business while at the State Department?

KENNEDY: I'm not aware of any.

CHAFFETZ: OK. Let me know yield in -- or recognize the Ranking Member Mr. Cummings.

CUMMINGS: What would be the -- just following up on the Chairman's questions. You said that there are exceptions when a person is no longer employed at state, that they would maintain I guess there -- what kind of exemptions on there?

KENNEDY: There is a presidential executive order that permits former presidential appointees to retain a security clearance for the purposes of reviewing materials that they saw, generated or handled during -- only during their tenure. So I was trying to be very precise.

CUMMINGS: Yes. Well, thank you.

KENNEDY: In response to the Chairman's question.

CUMMINGS: You know, one of the things that is interesting about all of this, is that there seems to be I believe by many on this committee that there has been intentional stalling. If not, obstruction with regard to document, providing documents.

Can you talk about that Mr. Kennedy because I just, you know, I listened to you carefully and you talk about I'm not accusing you of that but you talked about all the documents, all the emails you have a deal with, you ratcheted up your budget, transferred the money so that you could deal with more. You talked about the priorities, you talked about the FOIA 20-day rule.

Talk about that too because I don't want the American people -- I want you to have opportunity to say, how you feel about your office, your employees, and what you trying to do. I don't want that just hanging out there.

KENNEDY: Certainly. Thank you very much, Sir. Look we take our FOIA responsibilities very seriously. We were very, very pleased in in 2013, for example where we managed to close more cases than we received. When in 2014 than we almost did the same thing. We got in 20,000 cases and closed 18,000. In 2015 though, the curve just started to take off.

We got 24,837 requests which was up 5000 the year before it 6000, from the year before that of 10,000 from three years before that. The volume of the FOIA request, they are receiving are growing exponentially.

We have put additional resources into it, but the result -- it keeps growing the State Department's operating budget during that same period and we get great support from the committees of appropriations. But they operate under caps.

So the State Department's operating budget is down 25 percent in constant dollar terms from five years ago. The workload is up 8300 percent and so we keep putting resources into it, but I cannot yet find a way to keep up. That's why I have teams working with the Ambassador Jacobs, new technologies, more personnel we have an obligation under the law and I believe to the American people as I believe was Mr. Russell talked about.

We believe that this is our responsibility. We are carrying it out to the maximum extent possible. But with these many documents under request and then one last thing if I might seem, Mr. Ranking Member is that, a request to a government

agency that does not handle classified information, does not operate in 275 locations around the world with multiple bureaus and responsibilities. That's an easy push, I believe it was Mr. Grothman's question about, you know, I'm sorry, with Mr. Palmer's question about timing. They can turn those out very quickly.

We get very, very complex national security document request. And that those materials contain are material references to other agencies. We have to coordinate with the intelligence community, with the Defense Department potentially the Department of Energy, the Department of Justice, Department of Homeland Security, it simply takes a long time to do those.

And then we breach the 20 day rule and then we get sued, which has the Chairman points out causes these even more businesses. I will never, I don't think and I hate to admit that because I don't like to admit failure. And we be -- think will be able to admit that we're going to be able to turn out complex documents.

CUMMINGS: Is that because you didn't want to or you're trying to obstruct or?

KENNEDY: No, sir, absolutely not. We have put more and more people as I mentioned we were working with 64 people pushed it 81, then to 93 and depending on the budget for FY '17, we'll push it up to 118 and we're deploying new technologies and additional better training for our personnel.

When we can automate this process better, especially on the emails as I mentioned to the Chairman a few minutes ago, our telegraphic records and our memorandum records are much more easily searchable because they are already there in a searchable format.

CUMMINGS: I'm almost...

(CROSSTALK)

KENNEDY: The emails need a lot of work and that is what Ambassador Jacobs is directing.

CUMMINGS: You know, I was sitting and listening to you, I was trying to figure out what makes you guys a happy. In other words, when do you say, boy, we really did a great thing let's go out now and have beer and celebrate. Because it doesn't sound like this actually worked by the way.

KENNEDY: Well, I take incredible pride and confidence in the dedication in order to get those 55 -- 53,000 pages of Secretary Clinton's record out. We had people working, you know, 10, 12 hours a day seven days a week. You know, impinging on holidays.

We have an obligation to the American people. We will do everything we can do need it, but there are certain structural, mechanical, software limitations that we're facing. There's also the colloquy that I had with the with Congresswoman Norton about our requirement to protect foreign government information.

But yet I don't have the exemption that the Department of Defense, the Department of Energy has, that means we have to classify every one of those documents. That is a specific and time-consuming action.

Yet, if you just barked it with the correct be designation for foreign government information I think that would take a huge burden off the State Department in terms of responding to routine requests because we have to deal with them as they come in.

But it would also take away the misimpression that, oh my, God there were 2000 emails who were classified as confidential and it's really about somewhere between 60 percent, 70 percent of them were classified confidential only because that was the only way that I have under current statute to protect foreign government information unlike the Department of Energy...

(CROSSTALK)

CUMMINGS: Let me just close that. First of all, I thank you for your response. And I'll said it jokingly about sexy work I

really -- I said to emphasize that we are grateful for what you all do. I know sometimes you think it's thankless and you hear a lot of complaints, but we do appreciate it.

KENNEDY: Oh, it's an honor, Sir, to serve.

CUMMINGS: Mr. Chairman, I just wanted to close my pointing out that we have heard today about a broken and a flawed classification system and I think if we don't do anything else we can try to help with the system of classification because it is so serious and can create all kinds of problems. And I'm looking forward to working with you in an effort to try to address this issues as best we can. And with that, I want to thank you all.

CHAFFETZ: I thank the Ranking Member. I do think we need to work collaboratively on not only the classification process but also security clearances because my goodness, we got millions of people with security clearances and I still harken back to with Senator Patrick Moynihan spearheaded some 20-25 years ago I can't remember the date, but when he basically issued a report good bipartisan report that said, when everything's classified nothing is classified. When everybody has a security clearance nobody has a security clearance.

So I do think that that's a long-term project that I would love this committee to engage in. I need to ask one last thing because it does impact of the four of you that are sitting here.

You have this trove it is by the tens of thousands you look at this these federal records that are now suddenly dumped on your lap but didn't know were there and then you also look at all the requests congressional requests, subpoenas, FOIA requests, media request sometimes come in as FOIA sometimes don't, how do you take those four sets of requests and cross-reference it with probably information from Secretary Clinton's federal records that should have been included is the idea. That you just got to throw them all up in the Internet and everybody is saying, you have go hunt and peck through the 55,000 or you're going to go back to a subpoena. And say, all right, that was actually not as responsive as it probably could have been. This FOIA request was incomplete because it should have included this particular email or her calendar. Whatever it might be. How do you take this set of the 55,000 or the pages and now we hear it's tens of thousands more than that. How do you that and cross-referenced with the thousands of requests that had been covered into the State Department over the last, you know, since 2009.

KENNEDY: I think there are two ways to do that, Mr. Chairman. We could go back and go through every single previous FOIA request and I think would grind to a halt. The request and the efforts were making now. I believe the right solution is what we are doing. We are putting all of the emails upon our searchable website.

So, if you ask about Xanadu and we told you we didn't have any records you could go to this special portion of our website which has all the 53,000 Clinton records and you could put in Xanadu and it would find Xanadu for you.

CHAFFETZ: You're not talking about the record that -- for back in the 70's are you? I'm just teasing. Keep going. Yes.

KENNEDY: Xanadu is my favorite country.

CHAFFETZ: OK.

KENNEDY: Because it's not a country and I can use it as an example without ever...

(CROSSTALK)

CHAFFETZ: I thought you're a big music fan of particular artists from the 70s.

KENNEDY: I can shift...

(CROSSTALK)

CHAFFETZ: It's OK. Keep going.

KENNEDY: ...a lot.

CHAFFETZ: Yes.

KENNEDY: I think that, that is the way for us to best be good stewards of the taxpayers' dollars, but also the most and quickest responders to the American people.

CHAFFETZ: So why not just do that all the time. Forget about FOIA, forget about subpoenas, we get stuff out put on the Internet. Good luck.

KENNEDY: Because there is foreign government information, privacy act information, national security act information in that material and...

(CROSSTALK)

CHAFFETZ: So you have no plans to go back and redo -- what about subpoenas?

KENNEDY: If someone -- we respond to subpoenas. We work very, very...

(CROSSTALK)

CHAFFETZ: No, but you responded to a subpoena say, and I'm making -- I don't have an exact point case and it came across in 2011 and you just got the record here in 2016, are you going to go back and look at that subpoena?

KENNEDY: We would -- for subpoenas which we would consult with the Department of Justice about what we needed to do to be in compliance with the court.

CHAFFETZ: I think I can afford...

(CROSSTALK)

KENNEDY: Or the Congress.

CHAFFETZ: OK. So that's what I'm saying. There's this universe sort of four areas, four buckets and I hope I'm not missing one, but you have FOIA requests, you have subpoenas, you have congressional inquiries and you finally have media requests which come in a variety of different format.

So I would appreciate what is your game plan to deal with -- you didn't asked for this, but this is what the consequence of Hillary Clinton's convenience was is you have to deal with it. So what are you going to do? How are you going to prioritize it and what's the expectation if somebody has a subpoena for company or individual or an attorney or whatever it is. There is a subpoena out there, will you be going back and cross referencing that?

KENNEDY: Let me...

(CROSSTALK)

CHAFFETZ: For each of those four. And I'm not expecting you to do it often cough. I would just appreciate if the State Department would say this is how we're going to deal with it. And if it's not those four buckets tell me what it is but at least of the top my head. That's what it is. All I'm asking for here is a game plan to deal with that. I don't think it's good enough to just say we're thrown everything up on the Internet and everybody good luck.

KENNEDY: That was in response Mr. Chairman...

(CROSSTALK)

KENNEDY: And the FOIA is so -- yes. We will review congressional document requests as we continually review them as you know, Mr. Chairman, we sent you 186,000 pages and if has to be 187,000 or 197,000 we will work with you as we talk about when I met in your office.

For subpoenas we will talk with the Department of Justice to see what steps we may have to take and have our lawyers work and that for the media. I leave the media to take care of themselves.

CHAFFETZ: That will be so glad to hear that. But if there was a media request?

KENNEDY: The media request would be a FOIA request and therefore, we would -- we have made it very clear that we...

(CROSSTALK)

CHAFFETZ: At least for those four just -- what's a reasonable time that you give me, give the committee a game plan on how you're going to deal with us?

KENNEDY: Given -- I believe that the legal question about subpoenas is a complex one. I think it would have to be a couple weeks because we have to...

(CROSSTALK)

CHAFFETZ: End of the month, is that fair? Today's date?

KENNEDY: I can certainly try, but I have to talk to my legal advisor and have to talk to the department.

CHAFFETZ: OK. We're going to start waving the red flags and hey, you're not being responsive. If I don't hear back from you by the end of the month. Fair enough?

KENNEDY: When I have to go outside the State Department I make no guarantees, Mr. Chairman.

CHAFFETZ: What do you mean outside the State Department?

KENNEDY: Talk to the Department of Justice, that's outside the State Department. They are not under my control.

CHAFFETZ: OK. I just need a good fit because I think you have thousands of people waiting and wondering how this affects their -- these four categories from subpoenas, congressional, members of Congress all that. That's all I'm asking.

KENNEDY: On FOIA...

(CROSSTALK)

CHAFFETZ: I think you get it, OK. I just need to responsive and I need a game plan and I understand the need to interact with the Department of Justice.

Appreciate the work that you and so many people do at the State Department, we appreciate your attendance here today and the committee stands adjourned.

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Region: (Alabama (1AL90); Americas (1AM92); Arab States (1AR46); Asia (1AS61); District of Columbia (1DI60); Eastern Asia (1EA61); Far East (1FA27); Gulf States (1GU47); Japan (1JA96); Middle East (1MI23); North America (1NO39); Pennsylvania (1PE71); Saudi Arabia (1SA38); South Carolina (1SO63); U.S. Mid-Atlantic Region (1MI18); U.S. Southeast Region (1SO88); USA (1US73))

Language: EN

Other Indexing: (FOIA; clinton foundation) (Lieu; Patrick Kennedy; Patrick Kennedy; Again; Rice; Clarence Finney Jr.; John Kirby; Albright; Sidney Blumenthal; Cheryl Mills; Arden Embassies; Albright too; Hilary Clinton; Karin Lang; David Kendall; Clarence Finney; Stevens; Comey; Gowdy; John Kerry; Chair; Janice Jacobs; Now; Mica; MATT CARTWRIGHT; Donald J. Trump; Donald Trump; Compliance Witnesses; Walberg; Lynch; Colin Powell; Corker; Hillary Clinton; Clarence Finney Jr.; Eleanor Holmes Norton; Patrick Moynihan; Patrick Kennedy; John Kerry; Grothman; Rice; Carter; Janice Jacobs; Palmer; Clarence Finney Jr.; Albright; Farenthold; Compliance Witnesses; Cheryl Mills; George Shultz; Karen Lang; Monica Hanley; Karin Lang; Colin Powell; Hice; Hillary Clinton)

Keywords: Hearings; Foreign Affairs

Word Count: 29899

End of Document

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NewsRoom



Laurence Brewer <laurence.brewer@nara.gov>

Outgoing correspondence

1 message

Laurence Brewer <laurence.brewer@nara.gov>

Fri, Sep 16, 2016 at 8:05 AM

To: "FischerWP@state.gov" <fischerwp@state.gov>

Cc: "Stern, GaryM" <garym.stern@nara.gov>

Bcc: "Hawkins, Margaret" <margaret.hawkins@nara.gov>, "Clavelli, Lisa" <lisa.clavelli@nara.gov>

Good morning Bill,

I have a couple of things on my list for you today. First, I am attaching a letter we dropped in the mail yesterday to Amb. Kennedy following up on our previous letter of March 14. There is nothing new in the letter, other than requests to follow up on the Powell situation raised in the recent hearing and for us to meet sometime in the fall to discuss progress on the various RM activities ongoing in the Department.

The other matter concerns the review of the personal we discussed a week ago. We would like to get that scheduled as soon as you are ready for us. We understand you are trying to meet a 9/22 date, so if we need to complete our review by then, we need to get that planned out. If you have further information on the timeframe for our review, that would be good to know.

I am teleworking today so feel free to call me on my cell. Looking forward to hearing back on the details.

Thanks,

L.

--

Laurence Brewer, CRM

Chief Records Officer for the U.S. Government

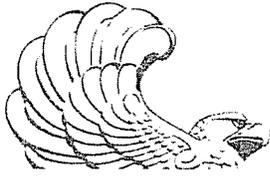
National Archives and Records Administration

Laurence.Brewer@nara.gov

Office: (301) 837-1539

Cell: (301) 974-4582

 2016-09-15_UnauthDisp_State_Clinton Email.pdf
746K



NATIONAL
ARCHIVES

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.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

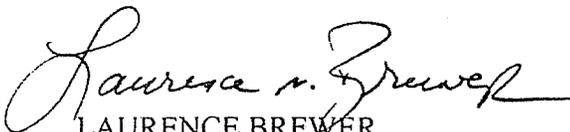
www.archives.gov

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,

A handwritten signature in cursive script that reads "Laurence M. Brewer".

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

Cc: Ambassador Janice L. Jacobs
United States Department of State
D-MR, Room 1464
2201 C Street, N.W.
Washington, DC 20520-6421



GaryM Stern <garym.stern@nara.gov>

Re: FW: Letter from U/S Kennedy -- Powell Emails at AOL

1 message

GaryM Stern <garym.stern@nara.gov>
To: Laurence Brewer <laurence.brewer@nara.gov>

Mon, Oct 3, 2016 at 1:20 PM

Yes, of course, no problem.

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Mon, Oct 3, 2016 at 1:15 PM, Laurence Brewer <laurence.brewer@nara.gov> wrote:

Hi Gary, I did get your voice message. OK to catch up in the morning? (b) (6)

(b) (6)

On Mon, Oct 3, 2016 at 10:38 AM, GaryM Stern <garym.stern@nara.gov> wrote:

fyi, I just came upon this email from State from last Wednesday, September 28, relaying that Secretary Powell was informed by AOL that "there are no emails in the AOL system from General Powell's tenure as Secretary of State."

Moreover, it appears that AOL informed the House Oversight Committee of the same thing. Nonetheless, see attached letter dated September 30 from the Committee to AOL, asking them to search for Powell's emails.

Thanks,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

----- Forwarded message -----

From: **Prosser, Sarah E** <ProsserSE@state.gov>
Date: Wed, Sep 28, 2016 at 3:26 PM
Subject: FW: Letter from U/S Kennedy
To: GaryM Stern <garym.stern@nara.gov>
Cc: "Visek, Richard C" <VisekRC@state.gov>

FYI

This email is UNCLASSIFIED.

From: Peggy Cifrino (b) (6) >
Sent: Wednesday, September 28, 2016 09:18
To: Austin-Ferguson, Kathleen T
Subject: Fw: Re: Letter from U/S Kennedy

Dear Under Secretary Kennedy,

This is in response to your letter to me dated Sept. 26th. (b) (6) has informed us that her office call Mr. Andrew Dockham at the House Committee on Oversight & Government Reform to advise him that there are no emails in the AOL system from General Powell's tenure as Secretary of State.

Sincerely,
Peggy Cifrino

*Peggy Cifrino
Principal Assistant to General Colin Powell
Office of General Colin L. Powell, USA (Ret)
909 North Washington Street, Suite 700
Alexandria, Virginia 22314*

(b) (6)

(b) (6)



GaryM Stern <garym.stern@nara.gov>

Re: FW: Letter from U/S Kennedy

1 message

GaryM Stern <garym.stern@nara.gov>

Fri, Oct 7, 2016 at 2:40 PM

To: "Prosser, Sarah E" <ProsserSE@state.gov>

Cc: "Visek, Richard C" <VisekRC@state.gov>, "Semo, Alina" <alina.semo@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>

fyi, in case you hadn't seen the House Oversight letter to AOL, dated September 30, even though the note below from Cifrino to Kennedy says AOL told the Committee by September 28 that it no longer had any such emails.

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Wed, Sep 28, 2016 at 3:26 PM, Prosser, Sarah E <ProsserSE@state.gov> wrote:

FYI

This email is UNCLASSIFIED.

From: Peggy Cifrino <(b) (6)>**Sent:** Wednesday, September 28, 2016 09:18**To:** Austin-Ferguson, Kathleen T**Subject:** Fw: Re: Letter from U/S Kennedy

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Sincerely,
Peggy Cifrino

*Peggy Cifrino
Principal Assistant to General Colin Powell
Office of General Colin L. Powell, USA (Ret)
909 North Washington Street, Suite 700
Alexandria, Virginia 22314*

(b) (6)

(b) (6)

 2016-09-30 JEC EEC to Armstrong-AOL - Federal Records (2).pdf
693K

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-8074
MINORITY (202) 225-8051
<http://oversight.house.gov>

September 30, 2016

Mr. Tim Armstrong
Chief Executive Officer and Chairman
AOL Inc.
770 Broadway
New York, NY 10003

Dear Mr. Armstrong:

We are writing to request that you assist in the recovery of federal records from former Secretary of State Colin Powell's emails that may still be accessible or recoverable by AOL.

Secretary Powell has publicly discussed the use of his AOL email account for government business. He wrote in his autobiography:

To complement the official State Department computer in my office, I installed a laptop computer on a private line. My personal email account on the laptop allowed me direct access to anyone online. I started shooting emails to my principal assistants, to individual ambassadors, and increasingly to my foreign-minister colleagues who like me were trying to bring their ministries into the 186,000-miles-per-second world.¹

On July 2, 2015, the National Archives and Records Administration requested the State Department contact AOL to determine "whether it is still possible to retrieve the email records that may still be present on their servers."² Under Secretary of State for Management Patrick Kennedy testified before the Committee on September 8, 2016, that the State Department never contacted AOL in response to that request.³

In order to assist in completing the historical record and ensuring compliance with the Federal Records Act, we request that you locate, retrieve, and preserve any emails from

¹ Colin Powell with Tony Koltz, *It Worked for Me: In Life and Leadership* (2012).

² Letter from Paul M. Wester, Chief Records Officer for the U.S. Government, National Archives and Records Administration, to Margaret P. Grafeld, Deputy Assistant Secretary for Global Information Services, Bureau of Administration, Department of State (July 2, 2015) (online at www.archives.gov/press/press-releases/2016/pdf/wester-to-dept-of-state_response-to-april-letter_2015-7-2.pdf).

³ House Committee on Oversight and Government Reform, *Examining FOIA Compliance at the Department of State* (Sept. 8, 2016).

Mr. Tim Armstrong

Page 2

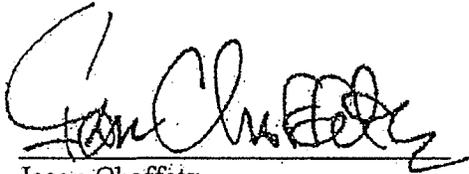
Secretary Powell's email accounts, including but not limited to LPowell861@aol.com, during his tenure as Secretary of State from January 20, 2001, through January 26, 2005.

We also request that any federal records within Secretary Powell's accounts, after being reviewed by Secretary Powell and his representatives, be provided to the State Department to be preserved, archived, and produced in response to requests from Congress or the public. Our staff has been in direct contact with Secretary Powell, and he has informed the Committee that he is eager to cooperate. We also understand Secretary Powell provided the necessary authorization to AOL for this.

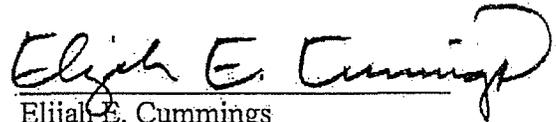
We look forward to hearing from you by October 14, 2016. The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

If you have any questions about this request, please contact Katy Rother from the Republican staff at (202) 225-5074 or Krista Boyd from the Democratic staff at (202) 225-5051. Thank you for your prompt cooperation with this request.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

cc: The Honorable Colin Powell



Margaret Hawkins <margaret.hawkins@nara.gov>

Fwd: Letter from U/S Kennedy to Ms. Cifrino

GaryM Stern <garym.stern@nara.gov>

Mon, Sep 26, 2016 at 5:13 PM

To: laurence.brewer@nara.gov, lisa.clavelli@nara.gov, Margaret Hawkins <Margaret.Hawkins@nara.gov>, Hannah Bergman <Hannah.Bergman@nara.gov>, Alina Semo <alina.semo@nara.gov>
Cc: William Bosanko <william.bosanko@nara.gov>

FYI

Gary M. Stern
General Counsel
National Archives and Records Administration
garym.stern@nara.gov
301-837-3026

Sent from my iPhone

Begin forwarded message:

From: "Austin-Ferguson, Kathleen T" <AustinKT2@state.gov>
Date: September 26, 2016 at 9:31:26 PM GMT+2
To: "garym.stern@nara.gov" <garym.stern@nara.gov>
Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

Good afternoon. Attached is a letter to Ms. Peggy Cifrino, Secretary Powell's Principal Assistant on which you were cc'd. Please acknowledge receipt of this e-mail. The original letter is being sent to you via post.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

2 attachments noname.html
1K 2016_09_26_14_26_53.pdf
160K



Laurence Brewer <laurence.brewer@nara.gov>

Fwd: Letter from U/S Kennedy to Ms. Cifrino

2 messages

GaryM Stern <garym.stern@nara.gov>

Mon, Sep 26, 2016 at 5:13 PM

To: laurence.brewer@nara.gov, lisa.clavelli@nara.gov, Margaret Hawkins <Margaret.Hawkins@nara.gov>, Hannah Bergman <Hannah.Bergman@nara.gov>, Alina Semo <alina.semo@nara.gov>

Cc: William Bosanko <william.bosanko@nara.gov>

FYI

Gary M. Stern
General Counsel
National Archives and Records Administration
garym.stern@nara.gov
301-837-3026

Sent from my iPhone

Begin forwarded message:

From: "Austin-Ferguson, Kathleen T" <AustinKT2@state.gov>

Date: September 26, 2016 at 9:31:26 PM GMT+2

To: "garym.stern@nara.gov" <garym.stern@nara.gov>

Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

Good afternoon. Attached is a letter to Ms. Peggy Cifrino, Secretary Powell's Principal Assistant on which you were cc'd. Please acknowledge receipt of this e-mail. The original letter is being sent to you via post.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

2 attachments

 noname.html
1K

 2016_09_26_14_26_53.pdf
160K

GaryM Stern <garym.stern@nara.gov>

Mon, Sep 26, 2016 at 5:22 PM

To: laurence.brewer@nara.gov, Margaret Hawkins <Margaret.Hawkins@nara.gov>, lisa.clavelli@nara.gov, Hannah Bergman <Hannah.Bergman@nara.gov>, Alina Semo <alina.semo@nara.gov>
Cc: William Bosanko <william.bosanko@nara.gov>, John Hamilton <john.hamilton@nara.gov>

FYI, I think it's the same letter, but without the second page tracking info.

Gary M. Stern
General Counsel
National Archives and Records Administration
garym.stern@nara.gov
301-837-3026

Sent from my iPhone

Begin forwarded message:

From: "Austin-Ferguson, Kathleen T" <AustinKT2@state.gov>
Date: September 26, 2016 at 10:10:15 PM GMT+2
To: "garym.stern@nara.gov" <garym.stern@nara.gov>
Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

My apologies. Please disregard the previous letter I sent you and use this one.

Thank you.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

From: Austin-Ferguson, Kathleen T
Sent: Monday, September 26, 2016 3:31 PM
To: 'garym.stern@nara.gov'
Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

Good afternoon. Attached is a letter to Ms. Peggy Cifrino, Secretary Powell's Principal Assistant on which you were cc'd. Please acknowledge receipt of this e-mail. The original letter is being sent to you via post.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

2 attachments



noname.html

1K



Black PDF.PDF

14K



GaryM Stern <garym.stern@nara.gov>

RE: Letter from U/S Kennedy to Ms. Cifrino

1 message

Austin-Ferguson, Kathleen T <AustinKT2@state.gov>
To: GaryM Stern <garym.stern@nara.gov>

Mon, Sep 26, 2016 at 5:23 PM

Thanks. You can delete the first one.

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

From: GaryM Stern [mailto:garym.stern@nara.gov]
Sent: Monday, September 26, 2016 5:21 PM
To: Austin-Ferguson, Kathleen T
Subject: Re: Letter from U/S Kennedy to Ms. Cifrino

Ok, got this one too.

Gary M. Stern

General Counsel

National Archives and Records Administration

garym.stern@nara.gov

301-837-3026

Sent from my iPhone

On Sep 26, 2016, at 10:10 PM, Austin-Ferguson, Kathleen T <AustinKT2@state.gov> wrote:

Mr. Stern –

My apologies. Please disregard the previous letter I sent you and use this one.

Thank you.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

From: Austin-Ferguson, Kathleen T
Sent: Monday, September 26, 2016 3:31 PM
To: 'garym.stem@nara.gov'
Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stem –

Good afternoon. Attached is a letter to Ms. Peggy Cifrino, Secretary Powell's Principal Assistant on which you were cc'd. Please acknowledge receipt of this e-mail. The original letter is being sent to you via post.

Regards,

Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

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UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON

SEP 26 2016

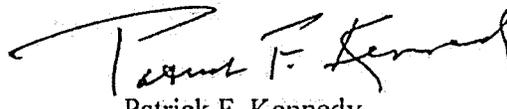
Dear Ms. Cifrino:

I am writing regarding the Department of State's October 21, 2015 request that your office check, if it has not already done so, with the internet service provider for former Secretary Powell's personal email account to see if it is possible to retrieve any emails that are federal records from Secretary Powell's tenure at the Department. If his internet service provider, which we understand to have been AOL, is able to recover any emails, we request that they be provided to your office and that any federal records then be made available to the Department. Should you have any questions regarding what constitutes a federal record, the Department can provide guidance.

If your office would prefer that the Department undertake a review of emails for federal records, we are prepared to assist and would ask that Secretary Powell authorize his service provider to retrieve his emails from the period corresponding to his tenure as Secretary and forward such emails to the Department of State so that we may do the record review.

We greatly appreciate your consideration of and attention to this request.

Sincerely,

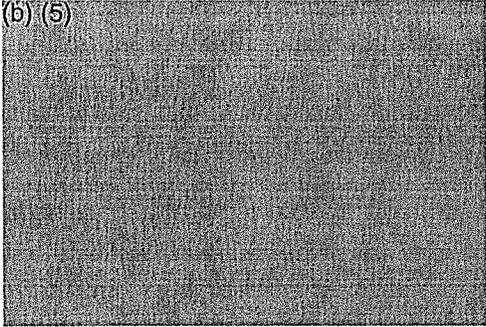


Patrick F. Kennedy

cc: Julie Jacobs, AOL General Counsel
Gary Stern, NARA General Counsel

Ms. Peggy Cifrino,
Principal Assistant to Secretary Colin Powell,
Office of Secretary Colin L. Powell,
909 North Washington Street, Suite 700,

Drafted: (b) (5) 

Clearance: (b) (5) 



GaryM Stern <garym.stern@nara.gov>

Fwd: Letter from U/S Kennedy to Ms. Cifrino

1 message

GaryM Stern <garym.stern@nara.gov>

Mon, Sep 26, 2016 at 5:22 PM

To: laurence.brewer@nara.gov, Margaret Hawkins <Margaret.Hawkins@nara.gov>, lisa.clavelli@nara.gov, Hannah Bergman <Hannah.Bergman@nara.gov>, Alina Semo <alina.semo@nara.gov>

Cc: William Bosanko <william.bosanko@nara.gov>, John Hamilton <john.hamilton@nara.gov>

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Gary M. Stern
General Counsel
National Archives and Records Administration
garym.stern@nara.gov
301-837-3026

Sent from my iPhone

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Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

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Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

From: Austin-Ferguson, Kathleen T
Sent: Monday, September 26, 2016 3:31 PM
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Subject: Letter from U/S Kennedy to Ms. Cifrino

Mr. Stern –

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Kathleen Austin-Ferguson

Senior Advisor

M

Department of State

Tel: 202-647-0728

2 attachments

 **noname.html**
1K

 **Black PDF.PDF**
14K

UNDER SECRETARY OF STATE
FOR MANAGEMENT
WASHINGTON

SEP 26 2016

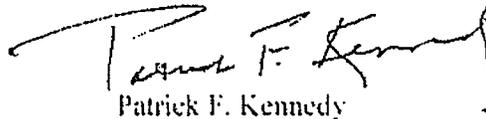
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We greatly appreciate your consideration of and attention to this request.

Sincerely,



Patrick F. Kennedy

cc: Julie Jacobs, AOL General Counsel
Gary Stern, NARA General Counsel

Ms. Peggy Cifrino,
Principal Assistant to Secretary Colin Powell,
Office of Secretary Colin L. Powell,
909 North Washington Street, Suite 700.