

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH  
JEFF SESSIONS, ALABAMA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
JEFF FLAKE, ARIZONA  
DAVID VITTER, LOUISIANA  
DAVID A. PERDUE, GEORGIA  
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT  
DIANNE FEINSTEIN, CALIFORNIA  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
AL FRANKEN, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

October 22, 2015

**VIA ELECTRONIC TRANSMISSION**

Mr. David S. Ferriero  
Archivist of the United States  
National Archives and Records Administration  
700 Pennsylvania Avenue, NW  
Washington, DC 20408

Dear Mr. Ferriero:

Thank you for your letter of September 28, 2015. The Committee appreciates your response. However, NARA failed to fully answer all questions posed. Specifically, with regards to the questions concerning 44 U.S.C. section 3106 (a), it is troubling to learn that as of the date of your letter, Secretary Kerry has not provided notice to NARA that emails produced by Mr. Blumenthal to Congress were not previously in the possession of the State Department (Department). The New York Times reported the Department cross checked Mr. Blumenthal's emails with their records and determined that nine full emails and portions of six others were not in its possession.<sup>1</sup>

In addition, there exists a two month email gap in the beginning of Secretary Clinton's tenure at State.<sup>2</sup> Among the emails sent and received by Secretary Clinton in that time period are work related emails to and from General David Petraeus found on Defense Department servers.<sup>3</sup>

---

<sup>1</sup> Michael S. Schmidt, "State Dept. Gets Libya Emails That Hillary Clinton Didn't Hand Over," The New York Times (June 25, 2015).

<sup>2</sup> Byron Tau and Peter Nicholas, "Hillary Clinton Emails Had a Two-Month Gap," The Wall Street Journal (September 20, 2015).

<sup>3</sup> Id.

The missing emails suggest that others may have been destroyed or may be being withheld improperly, contrary to federal records laws.

Your letter goes on to say that “in light of the ongoing activities, reviews, inquiries, and litigation described above [letter references a timeline of significant actions that have occurred related to Secretary Clinton emails found in Appendix B], in which the Department of Justice reportedly is actively involved, we do not believe that it is appropriate or necessary at this time for NARA to request that the Attorney General initiate an action.”

The timeline in Appendix B includes several letters between NARA and State, two Federal Records Act lawsuits (filed by Judicial Watch and Cause of Action), a court order related to the Judicial Watch lawsuit (and subsequent correspondence between State and the FBI related to the court order) and a Department of Justice motion to consolidate these two cases.

The remaining item from the timeline is a mention that the “Justice Department reportedly begins review of possible classified national security information related to Secretary Clinton’s emails.” NARA appears to justify its decision to not request the Attorney General to initiate an action for recovery of federal records based upon the foregoing inquiries.

Although the pending lawsuits and DOJ inquiry involve subject matter related to these facts and circumstances, they are not focused directly on the duty to protect and preserve Federal records, which is your responsibility. The evidence thus far would lead a reasonable person to conclude that federal records may have been destroyed. The plain language of the statute says “the Archivist shall request the Attorney General to initiate” action for the recovery of records that are known to have been or there is reason to believe have been unlawfully removed. The statute does not say the Archivist shall act unless a private party has brought a lawsuit or that the Archivist shall act unless the Justice Department reportedly begins a national security review of related records.

Accordingly, please answer the following:

1. Does NARA have the statutory authority to request the Attorney General to initiate an action for the recovery of records that are known to have been, or there is reason to believe have been, unlawfully removed?
2. Has the Department of Justice initiated action for the recovery of records that are known to have been or there is reason to believe have been unlawfully removed from the State Department, such as the Blumenthal emails, and the two month email gap in the beginning of Secretary Clinton’s tenure, including the Petraeus emails? If not, why has NARA not requested the Attorney General to initiate an action for recovery of Secretary Clinton’s emails?

Please number your responses according to their corresponding questions and respond no later than November 5, 2015. Please contact Paul Junge or Josh Flynn-Brown of my Committee staff at (202) 224-5225 if you have any questions about these matters. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley  
Chairman  
Committee on the Judiciary