

Fact Checker

Hillary Clinton's claim that 'everything I did [on e-mails] was permitted'

By Glenn Kessler July 9 at 3:00 AM

"Everything I did was permitted. There was no law. There was no regulation. There was nothing that did not give me the full authority to decide how I was going to communicate. Previous secretaries of state have said they did the same thing. Everything I did was permitted by law and regulation. I had one device. When I mailed anybody in the government, it would go into the government system."

—Former secretary of state Hillary Rodham Clinton, interview with CNN, July 7, 2015

It's been a while since we looked deeply at the controversy surrounding Clinton's e-mails while she was secretary of state but her recent statements to CNN provide a new opportunity.

In some ways, her remarks, when questioned on her "email practices," remind The Fact Checker of the then Vice President Al Gore's statement in 1997 that there was ["no controlling legal authority"](#) concerning his phone calls from the White House seeking Democratic campaign contributions.

Here, Clinton claims that "everything I did was permitted" because "there was no law...there was no regulation." So is that really the case?

The Facts

As we have noted before, [in our timeline of regulations](#) related to the controversy, the legal requirement to immediately preserve e-mails from nongovernment e-mail accounts was not made mandatory until nearly two years after she stepped down as secretary of state.

In 2014, President Obama signed an update of the 1950 Presidential and Federal Records Act. That law expanded the definition of "federal records" to specifically include electronic communications and also clarified the responsibilities of federal government officials when they use nongovernment e-mail systems. The responsibilities include copying an official record, such as an e-mail, or forwarding a complete copy of the e-mail within 20 days of transmission.

But that does not mean that, when Clinton was secretary of state, there were not already in place State Department rules on how to handle e-mails and whether to use a personal e-mail account. While Clinton says that other secretaries "did the same thing," none had set up an exclusive and private e-mail server for all of their departmental communications. (In fact, only

Colin L. Powell has ever said he sent e-mails from a personal account, so Clinton's use of plural is misleading.)

The rules also quickly became clearer. In 2009, just eight months after Clinton became secretary of state, the U.S. Code of federal regulations on handling electronic records was [updated](#): "Agencies that allow employees to send and receive official electronic mail messages using a system not operated by the agency must ensure that Federal records sent or received on such systems are preserved in the appropriate agency record-keeping system." The responsibility for making and preserving the records is assigned to "the head of each federal agency."

On top of that, when Clinton was secretary, [a cable](#) went out under her signature warning employees to "avoid conducting official Department business from your personal e-mail accounts."

The issue thus becomes whether Clinton cooperated in the spirit of the laws and rules in place at the time. Clinton suggests that "when I mailed anybody in the government, it would go into the government system" and so that signified compliance with the requirement to maintain federal records. But her practice made it difficult to locate records in response to specific requests, because Clinton's e-mail would be in another official's inbox — but would not exist in the federal system as part of Clinton's outbox. An official's outbox would be the first place that people seeking records would look.

[\[Read Hillary Clinton's emails\]](#)

In fact, let's recall that the State Department contacted Clinton, seeking copies of her e-mails, precisely because officials were unable to locate e-mails in response to queries from the House Select Committee on Benghazi.

The Clinton campaign, in explaining Clinton's remarks, pointed to this section of [a Q&A](#) released by Clinton's office earlier this year:

The Federal Records Act puts the obligation on the government official to determine what is and is not a federal record. The State Department Foreign Affairs Manual outlines guidance "designed to help employees determine which of their e-mail messages must be preserved as federal records and which may be deleted without further authorization because they are not Federal record materials." [5 FAM 443.1(c)].

Interestingly, [the section of the Foreign Affairs Manual](#) highlighted by Clinton's staff now directs people to [an interim directive](#) that was issued in mid-October, 2014, at about the time the State Department discovered that Clinton had retained all of her e-mails and had not turned them over to the State Department.

The notice stated:

Departing employees are also reminded they may 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. All federal records generated by employees, including senior officials, belong to the

Department of State.

In addition to the responsibility for preserving the documentation of official activities insofar as it is captured in email, employees generally should not use private e-mail accounts (e.g., Gmail, AOL, Yahoo, etc.) for official business. However, in those very limited circumstances when it becomes necessary to do so, the email messages covering official business sent from or received in a personal account must be captured and preserved in one of the Department's official electronic records systems. ...The best way for employees to ensure this is to forward e-mail messages from a private account to their respective State account.

Indeed, well before this directive was issued—and before Clinton joined the Obama administration—the Foreign Affairs Manual [made it clear](#) that before a senior official (such as a Senate-confirmed presidential appointee) departs government service, he or she must prepare an inventory of personal papers that are proposed for removal. The manual states that “correspondence or e-mail received or sent in an employee’s capacity as a Department official is not personal.”

Clinton certainly failed to live up to that requirement, as she had retained those e-mail records for nearly two years after she left office before returning them to the State Department. The Clinton campaign suggests she could determine what actually was a federal record, but her State Department-related emails did not fall in that category.

The Pinocchio Test

With her very careful language, Clinton skirts some of the important issues concerning her private e-mail account. She appears to be arguing her case on narrow, technical grounds, but that’s not the same as actually complying with existing rules as virtually everyone else understood them.

In reality, Clinton’s decision to use a private e-mail system for official business was highly unusual and flouted State Department procedures, even if not expressly prohibited by law at the time. Moreover, while she claims “everything I did was permitted,” she appears to have not complied with the requirement to turn over her business-related e-mails before she left government service. That’s a major misstep that she has not acknowledged.

We wavered between Two and Three Pinocchios, but Clinton’s excessive spin finally tipped us toward Three. She’s goes too far in suggesting her actions were ordinary—and did not stretch the limits of existing laws and regulations.

Three Pinocchios

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