

**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) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

September 6, 2016

The Honorable Channing D. Phillips  
U.S. Attorney for the District of Columbia  
555 Fourth Street NW  
Washington, D.C. 20530

Dear Mr. Phillips:

On August 16 and 17, 2016, the Committee received a limited production of files from the Federal Bureau of Investigation on its investigation of former Secretary of State Hillary Clinton's use of a personal, non-secure email server for official business. In reviewing those files, the Committee identified a sequence of events that may amount to obstruction of justice and destruction of evidence by Secretary Clinton and her employees and contractors, including her attorneys, employees of Platte River Networks, and employees of Clinton Executive Services Corporation. Therefore, I write to supplement my request of July 11, 2016, with a request for an investigation to determine whether Secretary Clinton and her employees violated provisions of sections 1001, 1505, or 1519 of title 18, United States Code, or any related provisions of law.

The FBI's investigative files reveal evidence that an engineer at Platte River Networks, the company responsible for maintaining the Secretary's third personal email server, deleted Secretary Clinton's email archives in March of 2015, despite knowing they were subject to preservation orders and a congressional subpoena. Additional information—a conference call with Secretary Clinton's attorneys days before the deletions; a work ticket created on or about the date of deletion; the use of BleachBit, a software program designed to prevent recovery of evidence; the manual deletion of Datto backups; and the engineer's refusal to discuss the conference call—raises questions about Secretary Clinton's involvement.

In light of this information, the Department should investigate and determine whether Secretary Clinton or her employees and contractors violated statutes that prohibit destruction of records, obstruction of congressional inquiries, and concealment or cover up of evidence material to a congressional investigation. In furtherance of such an investigation, you should consider why records were destroyed after Secretary Clinton and her agents were on notice to preserve them; the scope of privileges asserted by witnesses in their interviews with the FBI; and the apparent conflict of interest that inures by Cheryl Mills representing Secretary Clinton while

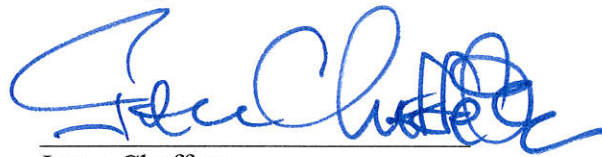
serving as a fact witness in the same matter. In support of this investigation I have enclosed copies of:

- (1) a letter this Committee sent to Secretary Clinton on September 20, 2012;
- (2) a letter this Committee sent to Secretary Clinton on December 13, 2012;
- (3) a letter the House Select Committee on Benghazi sent to Secretary Clinton, via her attorney David Kendall, on December 2, 2014;
- (4) a preservation order the Select Committee on Benghazi sent to Secretary Clinton, via her attorney David Kendall, on March 3, 2015;
- (5) a subpoena and return on service the Select Committee on Benghazi issued to Secretary Clinton, via her attorney David Kendall, on March 4, 2015; and
- (6) David Kendall's response to the Select Committee on Benghazi on March 27, 2015.

The Committee is prepared to provide signed and certified copies of any of these documents for the purpose of authentication, should you require them.

Thank you for your attention to this important matter.

Sincerely,



Jason Chaffetz  
Chairman

Enclosures (6)

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Loretta E. Lynch  
Attorney General of the United States

The Honorable James B. Comey, Director  
Federal Bureau of Investigation

Enclosure 1

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CHAIRMAN

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RANKING MINORITY MEMBER

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LAWRENCE J. BRADY  
STAFF DIRECTOR

September 20, 2012

The Honorable Hillary Rodham Clinton  
Secretary  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20005

Dear Madam Secretary:

The Subcommittee on National Security, Homeland Defense, and Foreign Operations is conducting oversight of the facts and circumstances surrounding the death of U.S. Ambassador to Libya J. Christopher Stevens and his colleagues on September 11, 2012. To date, public statements made by Administration officials have confused the American people as to exactly what happened on the 11th anniversary of the 9-11-2001 attacks. In fact, Administration accounts have differed sharply with those made by third parties, including the Libyan government. The universe of known facts, therefore, remains small and confusion has overshadowed certainty in this matter. The American people have a right to know precisely what happened that evening.

All we know for certain is that four Department of State personnel, including Ambassador Stevens, died at the hands of individuals who attacked the U.S. consulate in Benghazi, Libya. Accounts differ as to whom is responsible, why they did it, and the extent and timing of information provided to the United States. Some have attributed the attack as a "spontaneous" reaction to a YouTube video offensive to Muslims. Others, including Libyan President Mohammed el-Megarif, insist that it was a "pre-calculated, pre-planned attack that was carried out specifically to attack the U.S. consulate" on the anniversary of the terrorist attacks on 9-11-2001.<sup>1</sup>

Susan Rice, U.S. Ambassador to the United Nations, has offered a different perspective of the events. On September 16, 2011, she stated that heavily armed clusters of extremists hijacked an otherwise spontaneous replication of protests in Cairo.<sup>2</sup> The deadly attack, according to Ambassador Rice, "evolved" from a "protest" and was not premeditated.<sup>3</sup> This is a stark departure from President el-Megarif's assertions, and appear to contradict statements made

<sup>1</sup> Leila Fadel, "Consulate Attack Preplanned, Libya's President Says," NPR, September 16, 2012.

<sup>2</sup> "Ambassador Susan Rice: Libya Attack Not Premeditated," ABCNEWS, September 16, 2012.

<sup>3</sup> *Id.*

by National Counterterrorism Center Director Matt Olsen, who testified on September 19, 2012, that, "I would say yes, they were killed in the course of a terrorist attack on our embassy."<sup>4</sup>

Reports also indicate that information about impending attacks may have been provided to the U.S. Government prior to September 11, 2012.<sup>5</sup> According to an interview with February 17<sup>th</sup> Brigade member Jamal Mabrouk, he warned U.S. officials on several occasions that the security situation had worsened in Benghazi due to an increased presence of armed jihadists.<sup>6</sup> The latest warning apparently came three days ahead of the consulate attack.<sup>7</sup> Such notification may have been the subject of an alert letter issued by the Bureau of Diplomatic Security 48 hours in advance.<sup>8</sup>

Whatever the case may be, the American people have a right to know the facts about this egregious attack on U.S. sovereign territory. To that end, this Committee will investigate such matters as outlined under House Rules and expected by the American public. To assist this Subcommittee with its oversight, I ask that you please provide the following information:

1. All analyses, classified and unclassified, related to the security situation in Benghazi leading up to the attack;
2. All assessments, to include dissenting views, of potential threats to the American presence in Libya leading up to the attack;
3. All preliminary site exploitation results gleaned at the Consulate by U.S. Government personnel following the attack;
4. All warnings subsequently provided to U.S. Government personnel serving abroad based on the initial findings of the attack in Benghazi;
5. All documentation which supports or contradicts Ambassador Rice's statement that the attack evolved from a protest and was not premeditated;
6. All documentation which supports or contradicts Libyan President el-Megarif's statement that the attack was premeditated; and
7. All information, which does not directly expose sources or methods, related to the attack on the consulate.

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<sup>4</sup> Testimony of National Counterterrorism Center Director Matt Olsen before the Senate Committee on Homeland Security and Governmental Affairs, September 19, 2012.

<sup>5</sup> Arwa Damon, "More Details Emerge on U.S. Ambassador's Last Moments," CNN, September 15, 2012.

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

<sup>7</sup> Kim Sengupta, "Libya: We Gave US Three-Day Warning of Benghazi Attack," The Independent, September 18, 2012.

<sup>8</sup> *Id.*

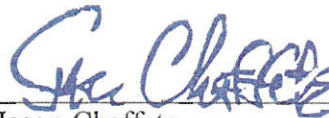
The Honorable Hillary Rodham Clinton  
September 20, 2012  
Page 3

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

We request that you provide the requested documents and information as soon as possible, but **no later than 5:00 p.m. on October 4, 2012**. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building, and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. The Committee has the cleared personnel and facilities to accept and store all classified information including Top Secret/SCI information.

If you have any questions about this request, please contact Thomas Alexander or James Lewis of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



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Jason Chaffetz  
Chairman  
Subcommittee on National Security,  
Homeland Defense, and Foreign Operations

Enclosure

cc: The Honorable John Tierney, Ranking Minority Member  
Subcommittee on National Security, Homeland Defense, and Foreign Operations

DARRYL E. ISSA, CALIFORNIA  
CHAIRMAN

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LAWRENCE J. BRADY  
STAFF DIRECTOR

### Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been



located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

#### **Schedule Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

Enclosure 2

ED BURKE, IN. INDIANA  
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JACKIE SPEIER, CALIFORNIA

December 13, 2012

The Honorable Hillary Rodham Clinton  
Secretary  
U.S. Department of State  
2201 C Street, NW  
Washington, D.C. 20520

Dear Secretary Clinton:

In conjunction with the Committee's oversight into improprieties associated with the Department of Energy's 1705 Loan Guarantee Program, the issue of the use of personal e-mail accounts to conduct official business arose on numerous occasions.<sup>1</sup> Energy Department employees brazenly used personal e-mail accounts to communicate about internal loan guarantee decisions. In doing so, they circumvented laws and regulations governing recordkeeping requirements, concealed their discussions, and attempted to insulate their communications from scrutiny. For example, Jonathan Silver, a political appointee in charge of the \$38 billion program, used his personal account to e-mail another DOE official's personal account, issuing a stern warning: **"Don't ever send an email on doe email with a personal email addresses [sic]. That makes them subpoenaable."**<sup>2</sup>

The challenges associated with electronic records preservation are not limited to the use of personal e-mail. Recently, allegations arose that EPA Administrator Lisa Jackson has used at least one alias e-mail account – under the name "Richard Windsor" – to conduct official business.<sup>3</sup> Such use of an alias raises the potential for inadequate tagging to the proper official and incomplete archiving of these communications.

<sup>1</sup> See, e.g., Letter from Rep. Darrell Issa, Chairman, & Rep. Jim Jordan, Chairman, Subcomm. on Reg. Affairs, Stimulus Oversight, & Gov't Spending, H. Comm. on Oversight & Gov't Reform (OGR), to Richard Kaufmann, Senior Advisor to the Sec'y, U.S. Dep't of Energy, *et al.* (Aug. 15, 2012) (requesting communications from non-official e-mail accounts regarding section 1705 loan guarantee program).

<sup>2</sup> E-mail from Jonathan Silver to Morgan Wright (Aug. 21, 2011).

<sup>3</sup> Brendan Sasso, *House Republicans Question EPA over Secret Email Accounts*, THE HILL, Nov. 17, 2012, <http://thehill.com/blogs/e2-wire/e2-wire/268605-republicans-question-epa-over-secret-email-accounts>; Michael Bastasch, *EPA Chief's Secret 'Alias' E-mail Account Revealed*, DAILY CALLER, Nov. 12, 2012, <http://dailycaller.com/2012/11/12/epa-chiefs-secret-alias-email-account-revealed/>.

These examples suggest that the challenges this Administration has faced regarding the preservation of electronic communications used to conduct official business have persisted, rather than improved. Further, the growth of social media platforms – such as Facebook, Twitter, and G-chat – and mobile technologies – including laptops, handheld mobile devices, and iPads – pose new challenges for capturing and retaining records under existing federal law.

For some time, the Committee on Oversight and Government reform has been aware of deficiencies in compliance with both the Presidential Records Act and the Federal Records Act. During the 110th Congress, under the leadership of then-Chairman Henry A. Waxman, the Committee sent letters to the heads of 23 Executive Branch departments and agencies regarding e-mail communications using non-official accounts.<sup>4</sup> Early in the Obama Administration, on February 18, 2009, I wrote to Gregory B. Craig, then-Counsel to the President, regarding this very subject.<sup>5</sup> In April 2010, reports emerged that Office of Science and Technology Policy Deputy Chief Technology Officer Andrew McLaughlin had used his personal e-mail account to engage in official business. Specifically, he used his personal account to engage in discussion regarding policy matters under his review with his former employer, Google, Inc.<sup>6</sup> In light of these and other reports documenting transparency failures, I alerted then-Committee Chairman Edolphus Towns of the need to investigate the matter further.<sup>7</sup>

On May 3, 2011, the full Committee held a hearing entitled, “Presidential Records in the New Millennium: Updating the Presidential Records Act and Other Federal Recordkeeping Statutes to Improve Electronic Records Preservation.” The hearing examined the enhanced transparency technology offers, particularly to improve citizens’ ability to interact with the federal government. It also highlighted the challenge of preventing federal officials from hiding their actions from public scrutiny in spite of these technological advancements. Finally, earlier this year, I wrote to White House Chief of Staff Jack Lew on August 3, 2012, requesting details of the use of personal e-mail accounts by White House staff to conduct official business.<sup>8</sup>

President Obama stressed improving the public’s ability to scrutinize government actions and decisions as part of his commitment to having the “most open and transparent [government] in history.”<sup>9</sup> The growth of technology, however, continues to create new challenges for electronic records preservation, and this Administration has struggled to ensure that official actions are appropriately captured and documented.

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<sup>4</sup> See, e.g., Letter from Rep. Henry Waxman, Chairman, OGR, to Hon. Michael Astrue, Comm’r, U.S. Soc. Sec. Admin., *et al.* (Apr. 12, 2007).

<sup>5</sup> Letter from Rep. Darrell Issa, Ranking Mem., OGR, to Hon. Gregory B. Craig, Counsel to the President (Feb. 18, 2009) (requesting detailed information about White House’s Presidential Records Act compliance efforts).

<sup>6</sup> Kim Hart, *Former Googler To Resign from White House*, POLITICO, Dec. 22, 2010, <http://www.politico.com/news/stories/1210/46740.html>.

<sup>7</sup> See, e.g., Letter from Rep. Darrell Issa, Ranking Mem., OGR, to Rep. Edolphus Towns, Chairman, OGR (June 30, 2010) (requesting investigation of use of personal e-mail accounts by Administration officials reported in media).

<sup>8</sup> Letter from Rep. Darrell Issa, Chairman, OGR, to Hon. Jack Lew, Chief of Staff, The White House (Aug. 3, 2012).

<sup>9</sup> The White House Blog, *Change has come to WhiteHouse.gov*, [http://www.whitehouse.gov/blog/change\\_has\\_come\\_to\\_whitehouse-gov](http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov) (Jan. 20, 2009).

To better assess the extent of this pervasive problem across the Executive Branch, I am writing to request information about your agency's policies and practices regarding the use of personal e-mail and other forms of electronic communication to conduct official business. Please provide the following information as soon as possible, but by no later than January 7, 2013:

1. Have you or any senior agency official ever used a personal e-mail account to conduct official business? If so, please identify the account used.
2. Have you or any senior agency official ever used an alias e-mail account to conduct official business? If so, please identify the account used.
3. Have you or any senior agency official ever used text messages, sent from an official or personal device, to conduct official business? If so, please identify the number or account used.
4. Please provide written documentation of the agency's policies regarding the use of non-official e-mail accounts to conduct official business, including, but not limited to, archiving and recordkeeping procedures, as well as disciplinary proceedings for employees in violation of these policies.
5. Does the agency require employees to certify on a periodic basis or at the end of their employment with the agency they have turned over any communications involving official business that they have sent or received using non-official accounts?
6. What is the agency's policy for retention of information posted on social networking platforms, including, but not limited to, Twitter or Facebook?
7. What agency policies and procedures are currently in place to ensure that all messages related to official business sent or received by federal employees and contractors on private, non-governmental e-mail accounts or social networking platforms are properly categorized as federal records?
8. Have any agency employees been subject to disciplinary proceedings for using non-official e-mail accounts to conduct official business since January 20, 2009? If so, please provide a list of names, dates of proceedings, and final outcomes.

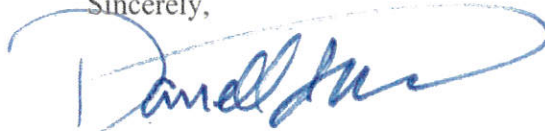
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please deliver your responses to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

The Honorable Hillary Rodham Clinton  
December 13, 2012  
Page 4

If you have any questions about this request, please call Ashley Callen or John Ohly of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish that loops back over the text.

Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure 3



TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

LYNN WESTMORELAND, GEORGIA  
JIM JORDAN, OHIO  
PETER ROSKAM, ILLINOIS  
MIKE POMPEO, KANSAS  
MARTHA ROBY, ALABAMA  
SUSAN W. BROOKS, INDIANA

PHILIP G. KIKO, STAFF DIRECTOR

# Congress of the United States

## House of Representatives

### Select Committee on Benghazi

1036 Longworth House Office Building  
Washington, D.C. 20515-6157  
(202) 226-7100  
<http://benghazi.house.gov>

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

ADAM SMITH, WASHINGTON  
ADAM B. SCHIFF, CALIFORNIA  
LINDA T. SANCHEZ, CALIFORNIA  
TAMMY DUCKWORTH, ILLINOIS

113<sup>TH</sup> CONGRESS

SUSANNE SACHSMAN GROOMS, MINORITY  
STAFF DIRECTOR

December 2, 2014

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

Dear Mr. Kendall:

Thank you for your recent conversations with Committee staff regarding Secretary Hillary Clinton's appearance before the Select Committee on Benghazi.

As we prepare for Secretary Clinton's testimony, we believe there may be documents and emails from Secretary Clinton relevant to the Committee's inquiry that have not been produced to the Committee and are likely in her possession. In the most recent document production to Congress in August 2014, the State Department, for the first time, produced emails regarding the Benghazi attack that were sent to and from the address of "hdr22@clintonemail.com." The use of this email address could explain the relatively small number of emails attributed to Secretary Clinton produced by the Department of State relevant to our requests.

The Department was able to identify these newly produced and ostensibly newly discovered emails because those emails additionally traveled to or from an official State Department email address. However, the Department has produced only a few of these documents. The Committee is of course interested in all relevant emails related to the state of Libya before, during, and after the attack on September 11, 2012 regardless of whether those emails originated from official or non-official accounts. To be clear, the Committee has no interest in any emails, documents or other tangible things not related to Benghazi. But to the extent personal email was used to conduct, in any way, official duties we would request those documents, emails, and other tangible things.

The following summary will aid your understanding of what we have seen in the limited documents produced thus far.

#### Examples of Email Usage

In the early morning hours of September 12, 2012, the day after the attack, Sidney Blumenthal, a longtime friend of Secretary Clinton, sent an email to [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) regarding Libya. Sent at 12:50 a.m., this email contained the subject "H: Magariaf on attack on

US in Libya. Sid.”<sup>1</sup> A second email, sent at 6:16 p.m. later that day, contained the subject “Fwd: more on Libya.”<sup>2</sup> This second email contained a 4-page document as an attachment. At the beginning of the document, in all capital letters, was the comment “THE FOLLOWING INFORMATION COMES FROM AN EXTREMELY SENSITIVE SOURCE AND SHOULD BE HANDLED WITH CARE.” Later, the document reads:

Source Comment: In the opinion of this individual, Libyan security officers also informed el Magariaf that the attacks had been planned for approximately one month.<sup>3</sup>

Later that night, Secretary Clinton forwarded both of these emails to Jake Sullivan, her deputy chief of staff. She commented, “we should get this around asap.”<sup>4</sup> What further action was taken by Secretary Clinton or Jake Sullivan regarding this information is unknown.

State Department officials also used the [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) address as a means to share information about Benghazi with Secretary Clinton. On September 14, 2012, Cheryl Mills, Secretary Clinton’s chief of staff, forwarded an article to this non-government address with the subject “Fw: pretty powerful piece on standing up for diplomats.”<sup>5</sup> On September 15, 2012, Mills again emailed Secretary Clinton’s private address, this time forwarding an article titled “US intelligence warned embassy in Egypt of concern about anti-Muslim film.”<sup>6</sup> The article had originally been sent from State Department Press Secretary Victoria Nuland to several high-level State Department officials, including Cheryl Mills, Jake Sullivan, Under Secretary Patrick Kennedy, and Assistant Secretary Eric Boswell, just ten minutes earlier.<sup>7</sup> Notwithstanding that the article was sent to these individuals’ official State Department email addresses, it was subsequently forwarded to Secretary Clinton’s private email address. This suggests that this private address could have been used with some frequency while conducting official State Department business.

Other top State Department officials also sent official communications to [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com). For example, on September 16, 2012, the day that U.S. Ambassador to the United Nations Susan Rice appeared on the Sunday morning talk shows, Jake Sullivan emailed Secretary Clinton a transcript from Rice’s appearance on *Meet the Press*, with the comment “Good.”<sup>8</sup> Clinton responded three minutes later from this address.<sup>9</sup> Two weeks later

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<sup>1</sup> Email from Sidney Blumenthal to Hillary Clinton (Sept. 12, 2012, 12:50 a.m.) [State Dept. Document #C05622868].

<sup>2</sup> Email from Sidney Blumenthal to Hillary Clinton (Sept. 12, 2012, 6:16 p.m.) [State Dept. Document #C05622865].

<sup>3</sup> *Id.*

<sup>4</sup> Email from Hillary Clinton to Jacob Sullivan (Sept. 12, 2012, 11:26 p.m.) [State Dept. Document #C05622865]; Email from Hillary Clinton to Jacob Sullivan (Sept. 12, 2012, 11:30 p.m.) [State Dept. Document #C05622868].

<sup>5</sup> Email from Cheryl Mills to Hillary Clinton (Sept. 14, 2012, 5:59 a.m.) [State Dept. Document #C05622888].

<sup>6</sup> Email from Cheryl Mills to Hillary Clinton (Sept. 14, 2012, 3:50 p.m.) [State Dept. Document #C05622885].

<sup>7</sup> Email from Victoria Nuland to Jacob Sullivan, et al. (Sept. 14, 2012, 3:40 p.m.) [State Dept. Document #C05622885].

<sup>8</sup> Email from Jacob Sullivan to Hillary Clinton (Sept. 16, 2012, 2:36 p.m.) [State Dept. Document #C05622873].

<sup>9</sup> Email from Hillary Clinton to Jacob Sullivan (Sept. 16, 2012, 2:39 p.m.) [State Dept. Document #C05622873].

Sullivan again emailed Clinton's private address, this time to forward the CIA's final unclassified talking points to her.<sup>10</sup>

Secretary Clinton not only used her [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) address to receive information, but also to email her top aides at the State Department. On September 11, 2012, just minutes after the attack on the Annex took place in Benghazi, Secretary Clinton emailed Cheryl Mills, Jake Sullivan, and Victoria Nuland from her private email address regarding Ambassador Chris Stevens. She wrote:

Cheryl told me the Libyans confirmed his death. Should we announce tonight or wait until morning?<sup>11</sup>

On September 26, 2012, Clinton emailed Jake Sullivan regarding a *New York Times* article. Clinton wrote:

Well, this is a stretch beyond what I said or intended, but I don't think we need to say more. Do you agree?<sup>12</sup>

Finally, in our review of the State Department production of records, it appears that at least one other top State Department official also had a private email address at the [@clintonemail.com](mailto:@clintonemail.com) domain address that may have been used for official business. On September 13, 2012, Secretary Clinton's official schedule for the following day was sent to nearly twenty people on private email domains.<sup>13</sup> One such individual was the Secretary's deputy chief of staff, with the email being sent to her "[@clintonemail.com](mailto:@clintonemail.com)" address rather than an official government email address.

Given Secretary Clinton's known usage of a private email address, coupled with the paucity of documents to or from Secretary Clinton produced by the State Department, I have a reasonable belief that there may be relevant information regarding Benghazi that was transmitted through private email addresses used by State Department officials, information that has not been captured or retained on State Department networks or produced to Congress.

#### Document Request

As we prepare for Secretary Clinton's testimony before the Select Committee, it is imperative that we have a full picture of what information Secretary Clinton had, and what actions she took, regarding Libya. The State Department has not provided all of the requisite

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<sup>10</sup> Email from Jacob Sullivan to Hillary Clinton (Sept. 27, 2012, 12:28 p.m.) [State Dept. Document #C05579952].

<sup>11</sup> Email from Hillary Clinton to Jacob Sullivan et al. (Sept. 11, 2012, 11:38 p.m.) [State Dept. Document #C05622916]. The subject of the email is "Chris Smith," the first name of Ambassador Chris Stevens and the last name of Sean Smith, the State Department Information Management Officer who also died in the attack on the Special Mission Compound. Given the fact that Smith had been declared dead hours earlier and Ambassador Stevens was missing, this email conversation was likely regarding Ambassador Chris Stevens.

<sup>12</sup> Email from Hillary Clinton to Jacob Sullivan (Sept. 26, 2012, 3:30 p.m.) [State Dept. Document #C05561922].

<sup>13</sup> Email from Lona Valmore to Lona Valmore and S\_S-Final Schedule (Sept. 13, 2012, 4:50 p.m.) [State Dept. Document #C05579612].

Mr. David E. Kendall  
December 2, 2014  
Page 4

documents on this matter, and this Committee needs access to all of Secretary Clinton's emails on these topics. Therefore, we see two potential ways for the Committee to have a full and complete account of these emails; first, to work through you, or second to work through the domain host of "@clintonemail.com." My strong preference is not to request production from a third-party in this matter, and I am hopeful you are able to provide the Committee the documents we need.

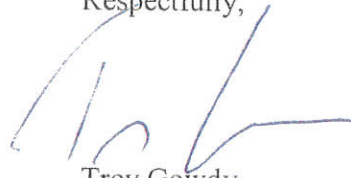
Therefore, please provide, as soon as possible but no later than December 31, 2014, any and all documents and communications referring or relating to a) Libya (including but not limited to Benghazi and Tripoli), and/or b) weapons located or found in, imported or brought into, and/or exported or removed from Libya, authored by, sent to, or received by the email address "hdr22@clintonemail.com" between January 1, 2011 through December 31, 2012.

Accessing the private email account of individuals is not something I undertake lightly. However, given the minimal documents produced by the State Department to date on this matter and the seemingly frequent usage of this email address by Secretary Clinton, it is necessary for the Committee to take the step of asking you to produce emails that fall within the scope of the Committee's mandate.

An attachment to this letter provides additional information about responding to this request. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 1036 of the Longworth House Office Building, and the Minority Staff in Room B241 of the Longworth House Office Building. The production of documents should be in electronic format.

Please contact the Committee's Staff Director, Phil Kiko, at (202) 226-7100 with any questions regarding this request. I look forward to working further with you on this matter.

Respectfully,

A handwritten signature in blue ink, appearing to read "Trey Gowdy", with a long horizontal flourish extending to the right.

Trey Gowdy  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure

## Document Request

For the time period of January 1, 2011 through December 31, 2012:

Any and all documents and communications referring or relating to a) Libya (including but not limited to Benghazi and Tripoli), and/or b) weapons located or found in, imported or brought into, and/or exported or removed from Libya, authored by, sent to, or received by the email address "[hdr22@clintonemail.com](mailto:hdr22@clintonemail.com)".

### Definitions

- A. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, cables, records, correspondence, letters, notes, manuals, instructions, financial reports, working papers, inter-office and intra-office communications, messages, electronic mail (e-mail), summaries or notations of any type of conversation, telephone or cellular call, meeting or other communication, transcripts, diaries, analyses, minutes, projections, comparisons, contracts, press releases, reviews, opinions, studies and investigations, (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
- B. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document, or otherwise, and whether in a meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise. Electronic or cellular communications shall not be limited to communications sent to or received by Department of State communication devices, addresses, or other means and shall include communications sent to or received by other devices, addresses or means but for which a document or communication exists or has been retained within or by the Department of State. For example, email communications shall include those sent to or received by an "@clintonemail.com" email address or "clintonemail.com" domain. Communications "sent to or received by" includes any means of transmission or receipt including but not limited to communications that are copied, blind copied or forwarded. Additionally, any communication that incorporates, contains, or attaches another document or communication shall include that additional document or communication.

- C. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request/subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
- D. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
- E. The term "weapons" includes any instrument, tool, or device for use in an attack or defense, to include but not be limited to firearms, grenades, mortars, missiles, MANPADS (man-portable air-defense systems), CBRNE (chemical, biological, radiological, nuclear, explosives) devices.

Committee on Oversight and Government Reform  
Jurisdictional prerogatives to investigating HRC email

- Pursuant to clause 1(n) of House Rule X, the Committee has legislative jurisdiction over the federal civil service, management of government operations and activities, public information and records and government-wide information technology.
  - Federal civil service, and the status of executive branch officers and employees of the United States, including their compensation, classification and retirement. This includes all of Title 5 of the United States Code, which includes the Hatch Act of 1939.
  - Overall economy, efficiency, and management of government operations and activities, including the Inspector General Act of 1978.
  - Public information and records, including federal records. This includes legislative jurisdiction over federal records and the transparency of those records, including the National Archives and Records Administration, the Presidential Records Act, Ethics in Government Act of 1978 and the Office of Information and Regulatory Affairs. Further, the Oversight Committee has legislative jurisdiction over public information and transparency of that information, including Freedom of Information Act and Advisory Committees.
  - Government-wide information technology policies and purchasing, and federal information technology and data standards, including Federal Information Security Management Act and the Federal Information Technology Acquisition Reform Act.
  - Reorganization of the legislative and executive branches of the Government.
- In addition to its legislative jurisdiction, the Committee may at any time conduct oversight investigations of any matter regardless of the jurisdiction of any other standing committee, pursuant to clause 4(c)(2) of House Rule X.

Enclosure 4



TREY GOWDY, SOUTH CAROLINA  
CHAIRMAN

LYNN WESTMORELAND, GEORGIA  
JIM JORDAN, OHIO  
PETER ROSKAM, ILLINOIS  
MIKE POMPEO, KANSAS  
MARTHA ROBY, ALABAMA  
SUSAN W. BROOKS, INDIANA

PHILIP G. KIKO, STAFF DIRECTOR

# Congress of the United States

## House of Representatives

### Select Committee on Benghazi

1036 Longworth House Office Building  
Washington, D.C. 20515-6090  
(202) 226-7100  
<http://benghazi.house.gov>

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

ADAM SMITH, WASHINGTON  
ADAM B. SCHIFF, CALIFORNIA  
LINDA T. SÁNCHEZ, CALIFORNIA  
TAMMY DUCKWORTH, ILLINOIS

114<sup>TH</sup> CONGRESS

SUSANNE SACHSMAN GROOMS, MINORITY  
STAFF DIRECTOR

March 3, 2015

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

Dear Mr. Kendall:

Last night, the *New York Times* published startling allegations that former Secretary of State Hillary Clinton exclusively used a private email account to conduct her official business while at the Department of State.<sup>1</sup> While this information is now publicly known, the Select Committee on Benghazi has been aware since last year that Secretary Clinton used a private email address to conduct official business. Documents produced to the Committee by the Department of State indicate that Secretary Clinton's private email account had a @clintonemail.com domain name. In fact, the Committee is aware of two accounts used by Secretary Clinton: [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com), and [hrc17@clintonemail.com](mailto:hrc17@clintonemail.com). It is unknown whether those were the only two accounts used by Secretary Clinton to communicate regarding Benghazi.

Given the recent public nature of these allegations, it is reasonably foreseeable that the Committee will request additional documents from Secretary Clinton in the very near future as it continues its investigation into the circumstances surrounding the Benghazi terrorist attacks. To ensure that a full and complete record of relevant communications will be produced to the Committee in response to a document request, the Committee requests that you:

1. Preserve all e-mail, electronic documents, and data ("electronic records") created since January 1, 2009, that can be reasonably anticipated to be subject to a request for production by the Committee. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;

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<sup>1</sup> Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, N.Y. TIMES (Mar. 3, 2015) at A1.

Mr. David E. Kendall

March 3, 2015

Page 2

2. Exercise reasonable efforts to identify and notify former employees and contractors who may have access to such electronic records that they are to be preserved; and
3. If it is the routine practice of any employee or contractor to destroy or otherwise alter such electronic records, either:
  - a. halt such practices; or,
  - b. arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

I request that you respond in writing as soon as possible, but **no later than March 5, 2015** to confirm receipt of this letter and to advise the Committee of the actions you will take to comply with this document preservation request.

If you have any questions about this request, please contact the Committee staff at (202) 226-7100. Thank you for your prompt attention to this matter.

Sincerely,



Trey Gowdy  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Enclosure 5

**SUBPOENA**

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE  
CONGRESS OF THE UNITED STATES OF AMERICA**

To The Honorable Hillary R. Clinton

You are hereby commanded to be and appear before the \_\_\_\_\_  
Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi  
of the House of Representatives of the United States at the place, date and time specified below.

to testify touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____	
Date: _____	Time: _____

to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: <u>1036 Longworth House Office Building, Washington, D.C. 20515</u>	
Date: <u>Friday, March 13, 2015</u>	Time: <u>12:00 p.m.</u>

To any authorized staff member or the U.S. Marshals Service

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States,  
at the city of Washington, this 4<sup>th</sup> day of March, 2015

[Signature]  
Chairman or Authorized Member

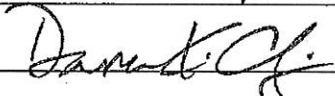
Attest: Karen P. Haas  
Clerk

**PROOF OF SERVICE**

---

Subpoena for  
The Honorable Hillary R. Clinton  
Address Per agreement with David E. Kendall, Esq. the service will be completed by email to  
David Kendall at Williams & Connolly LLP at [dkendall@wc.com](mailto:dkendall@wc.com)  
before the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi  
U.S. House of Representatives  
114<sup>th</sup> Congress

---

Served by (print name) DANA K. CHIPMAN  
Title Chief Counsel, House Select Committee on Benghazi  
Manner of service EMAIL TRANSMISSION - BY CONSENT  
Date March 4, 2015  
Signature of Server   
Address 1036 Longworth House Office Building, Washington, D.C. 20515

## SCHEDULE

In accordance with the attached schedule instructions and definitions, you, Hillary R. Clinton, are required to produce all records in unredacted form described below:

1. For the time period of January 1, 2011 through December 31, 2012, any and all documents and communications in your possession, and/or sent from or received by the email addresses "hdr22@clintonemail.com," "hrod17@clintonemail.com," or any other email address or communications device used by you or another on your behalf, referring or relating to:
  - (a) Libya (including but not limited to Benghazi and Tripoli);
  - (b) weapons located or found in, imported or brought into, and/or exported or removed from Libya;
  - (c) the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012; or
  - (d) statements pertaining to the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012.

### Schedule Instructions

1. In complying with this subpoena, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this subpoena has been, or is also known by any other name than that herein denoted, the subpoena shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this subpoena shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the subpoena cannot be made in full by March 13, 2015 at 12:00 p.m., compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided no later than March 12, 2015 at 12:00 p.m.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this subpoena is from January 1, 2011 to December 31, 2012.
16. This subpoena is continuing in nature and applies to any newly-discovered information as to the time period January 1, 2011 to December 31, 2012. Any responsive record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 1036 of the Longworth House Office Building and the Minority Staff in Room B241 of the Longworth House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.



### Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, cables, records, correspondence, letters, notes, manuals, instructions, financial reports, working papers, inter-office and intra-office communications, messages, electronic mail (e-mail), summaries or notations of any type of conversation, telephone or cellular call, meeting or other communication, transcripts, diaries, analyses, minutes, projections, comparisons, contracts, press releases, reviews, opinions, studies and investigations, (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document, or otherwise, and whether in a meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise. Communications "sent to or received by" includes any means of transmission or receipt including but not limited to communications that are copied, blind copied or forwarded. Additionally, any communication that incorporates, contains, or attaches another document or communication shall include that additional document or communication.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request/subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
5. The term "weapons" includes any instrument, tool, or device for use in an attack or defense, to include but not be limited to firearms, grenades, mortars, missiles, MANPADS (man-portable air-defense systems), CBRNE (chemical, biological, radiological, nuclear, explosives) devices.

Enclosure 6

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EDWARD BENNETT WILLIAMS (1920-1988)  
PAUL R. CONNOLLY (1922-1978)

March 27, 2015

**BY FIRST-CLASS SURFACE AND ELECTRONIC MAIL**

The Honorable Trey Gowdy  
United States House of Representatives  
Select Committee on Benghazi  
Washington, DC 20515

Dear Mr. Chairman:

This letter will respond to (1) the subpoena duces tecum issued by the Benghazi Select Committee to the Hon. Hillary R. Clinton and served by agreement on March 4, 2015; and (2) your March 19, 2015 letter requesting that former Secretary of State Clinton make her e-mail server available for third-party inspection and review.

**Response to the Subpoena**

As you know, the subpoena calls for the following documents, for the period January 1, 2011 through December 31, 2012, referring or relating to:

- (a) Libya (including but not limited to Benghazi and Tripoli);
- (b) weapons located or found in, imported or brought into, and/or exported or removed from Libya;
- (c) the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012; or
- (d) statements pertaining to the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012.

The subpoena requests production of any documents sent from or received by the e-mail addresses "hdr22@clintonemail.com" or "hrod17@clintonemail.com." As explained in my March 4, 2015 e-mail to your Staff Director and certain others, "hrod17@clintonemail.com" is not an address that existed during Secretary Clinton's

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tenure as Secretary of State.<sup>1</sup> With respect to any e-mails from Secretary Clinton's "hdr22@clintonemail.com" account, I respond by stating that, for the reasons set forth below, the Department of State—which has already produced approximately 300 documents in response to an earlier request seeking documents on essentially the same subject matters—is uniquely positioned to make available any documents responsive to your requests.

On December 5, 2014, in response to an October 28, 2014 letter request from the Department of State for assistance in ensuring its records were as complete as possible, personal attorneys for Secretary Clinton delivered to the Honorable Patrick F. Kennedy, the Under Secretary of State for Management, all e-mails from the hdr22@clintonemail.com e-mail account that were related or potentially related to Secretary Clinton's work as Secretary of State. The Secretary's personal attorneys had reviewed every sent and received (whether as "to," "cc," or "bcc") e-mail from the hdr22@clintonemail.com account during her tenure as Secretary (62,320 e-mails in total) and identified all work-related and potentially work-related e-mails (30,490 e-mails, approximately 55,000 pages)—which were provided to the State Department on December 5, 2014. The Department of State is therefore in possession of all of Secretary Clinton's work-related e-mails from the hdr22@clintonemail.com account.

Secretary Clinton has asked for release of all of those e-mails to the public. While she is eager for the release to happen as soon as possible, the State Department needs to review the 30,490 e-mails prior to their release to determine whether any action is necessary to protect sensitive diplomatic efforts of the United States or the safety or privacy of any individuals identified in the e-mails. The State Department has that process underway.

Secretary Clinton is not in a position to produce any of those e-mails to the Committee in response to the subpoena without approval from the State Department, which could come only following a review process. On March 23, 2015, I received a letter from the Under Secretary of State for Management (attached hereto) confirming direction from the National Archives & Records Administration ("NARA") that while Secretary Clinton and her counsel are permitted to retain a copy of her work-related e-

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<sup>1</sup> See e-mail from me to P. Kiko, S. Grooms, H. Sawyer, and D. Chipman (Mar. 4, 2015) ("I hope the following is helpful: Secretary Clinton used one email account when corresponding with anyone, from Department officials to friends to family. A month after she left the Department, Gawker published her email address and so she changed the address on her account. At the time the emails were provided to the Department last year this new address appeared on the copies as the 'sender,' and not the address she used as Secretary. This address on the account did not exist until March 2013, after her tenure as Secretary.").

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mails, those e-mails should not be released to any third parties without authorization by the State Department. The letter further makes clear that any permission to release documents to third parties must be preceded by a review by the State Department for “privilege, privacy or other reasons.” Thus, while Secretary Clinton has maintained and preserved copies of the e-mails provided to the State Department, she is not in a position to make any production that may be called for by the subpoena.

I should note that the subpoena overlaps in time frame and subject matter with a prior request you sent me. While the present subpoena includes two additional categories of documents that were not specified in the previous request—any and all documents related to “(c) the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012; or (d) statements pertaining to the attacks on U.S. facilities in Benghazi, Libya on September 11, 2012 and September 12, 2012”—those two categories appear to be encompassed by category (a) of the prior request, which broadly sought all documents “authored by, sent to, or received by” [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) referring or relating to Libya generally, including Benghazi. Thus, I do not view the subpoena to be broader in subject matter or time frame than the December 2, 2014 letter request.

As you know, in my December 29, 2014 response letter, I referred that request to the State Department for production of any responsive e-mails from the set of 30,490 work-related and potentially work-related e-mails from the [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) account that were provided to the State Department on December 5, 2014. On February 13, 2015, the State Department produced to the Committee approximately 300 e-mails (STATE-SCB0045000–STATE-SCB0045895) in response to the Committee’s requests from their records, which include the set of the 30,490 [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) e-mails that had been provided to the Department.

Finally, I observe that the subpoena calls for “any and all documents” during the requested time period related to the identified topics. In the event that we subsequently identify any other responsive documents, I will update this response promptly.

#### Response to Letter Request Regarding Server

In your March 19, 2015 letter, you requested that Secretary Clinton “make her server available to a neutral, detached and independent third-party for immediate inspection and review.” March 19 Letter at 1. I respectfully note that the March 19 letter does not offer legal authority or precedent for this request and instead relies on the various “interests” claimed to be at stake.

Each of these interests purportedly relates to various rights of access to federal records. Those interests have already been addressed by the step of ensuring that the State Department’s records are as complete as possible, through providing a copy of all of Secretary Clinton’s work-related and potentially work-related e-mails—the majority of

which was contemporaneously captured on the state.gov system—to the State Department in December 2014. Thus, the State Department has all of Secretary Clinton’s work-related and potentially work-related e-mails, regardless of whether they qualify as federal records.

The March 19 letter takes issue with Secretary Clinton’s role, through her legal representatives, as the “sole arbiter of what she considers private” and what she considers work-related. *See* March 19 Letter at 3. That procedure, however,—whereby individual officials are responsible for separating what is work-related (and potentially a federal record) from what is personal—is the very procedure that NARA and individual agencies rely upon to meet their obligations under the Federal Records Act every day. Indeed, NARA’s guidance and the State Department’s policies make clear that the reliance on individual officials to make decisions as to what e-mails must be preserved as federal records is not an “arrangement” that is “unprecedented” or “unique,” but instead the normal procedure carried out by tens of thousands of agency officials and employees in the ordinary course.

Specifically, the regulations implementing the Federal Records Act provide that “agencies must distinguish between records and nonrecord materials by applying the definition of records . . . to agency documentary materials in all formats and media.” 36 C.F.R. § 1222.12(a) (2014). The regulations further recognize that determining which materials are “[a]ppropriate for preservation” as evidence of agency activities—and therefore within the definition of a federal record—is a matter entrusted to the “judgment of the agency,” *id.* § 1222.10(b)(6) (2014). Both NARA guidance and State Department policies place the responsibility of exercising agency judgment to identify federal records on individual officials and employees. As NARA recently recognized with regard to the role of agency officials and employees in e-mail management, “[c]urrently, in many agencies, *employees manage their own email accounts and apply their own understanding of Federal records management.* This means that all employees are required to review each message, identify its value, and either delete it or move it to a recordkeeping system.” NARA Bulletin 2014-06, ¶ 4 (Sept. 15, 2014) (emphasis added).

Like other agencies, the State Department places the obligation of determining what is and is not appropriate for preservation on individual officials and employees. The Foreign Affairs Manual, which sets forth the Department’s policies with regard to e-mail management, provides that “[e]-mail message creators and recipients must decide whether a particular message is appropriate for preservation. In making these decisions, all personnel should exercise the same judgment they use when determining whether to retain and file paper records.” *See* 5 FAM 443.2(b). The Manual supplies guidance, drawn from the language of the Federal Records Act, to assist individuals in their exercise of judgment. *See* 5 FAM 443.2(a). The Manual also notes “[t]he intention of this guidance is not to require the preservation of every E-mail message. Its purpose is to direct the preservation of those messages that contain information that is necessary to

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March 27, 2015  
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ensure that departmental policies, programs, and activities are adequately documented.” 5 FAM 443.2(b); *see also* 36 C.F.R. § 1222.16(b)(3) (2014) (stating that “[n]onrecord materials should be purged when no longer needed for reference. NARA’s approval is not required to destroy such materials.”).

Thus, by design, individual officials and employees indeed do serve as arbiters of what constitutes a federal record, and therefore as individual implementers of the Federal Records Act. The Committee implicitly recognized this fact when, in its December 2, 2014 letter request for documents related to Libya and weapons related to Libya, it asked Secretary Clinton to undertake a review of the [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) account to determine whether any such documents existed on that account. The manner in which Secretary Clinton assisted the State Department in fulfilling its responsibilities under the Act here is consistent with the obligations of every federal employee.

The March 19 letter also expresses concern that Secretary Clinton’s “arrangement apparently also allowed her to delete those emails she alone determined to be personal in nature.” March 19 Letter at 3. This statement is at odds with your recognition of Secretary Clinton’s personal privacy and that “the Committee has not sought, is not seeking, and will not seek to possess, review, inspect or retain any document or email that is purely personal in nature,” as such materials are “none of the Committee’s business, and would not assist the Committee in discharging its responsibilities.” *Id.* at 5; *see also* letter from you to me (Dec. 2, 2014) at 1 (“To be clear, the Committee has no interest in any emails, documents or other tangible things not related to Benghazi.”). It is also at odds with federal regulations implementing the Federal Records Act, which provide that “personal files”—defined as “documentary materials belonging to an individual that are not used to conduct agency business”—are “*excluded from the definition of Federal records and are not owned by the Government.*” 36 C.F.R. § 1220.18 (2014) (emphasis added).

Finally, the March 19 letter expresses concern that the review process for identifying potential federal records—a process that NARA and the State Department require to be undertaken by individual officials—was potentially inadequate. The only specific concerns cited are that search terms may have been relied upon as a proxy for a document-by-document review, or that the process would have excluded from the set produced to the State Department any hybrid e-mails that contained both work-related and personal materials. These concerns, however, are addressed by the fact that the Secretary’s personal attorneys reviewed her email (search terms were employed as an aid to, not as a proxy for, that review), and that any work-related *and* potentially work-related (hybrid) e-mails were provided to the Department.

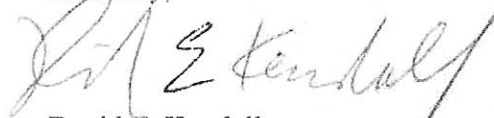
There is no basis to support the proposed third-party review of the server that hosted the [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) account. During the fall of 2014, Secretary Clinton’s legal representatives reviewed her [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) account for the

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time period from January 21, 2009 through February 1, 2013. After the review was completed to identify and provide to the Department of State all of the Secretary's work-related and potentially work-related emails, the Secretary chose not to keep her non-record personal e-mails and asked that her account (which was no longer in active use) be set to retain only the most recent 60 days of e-mail. To avoid prolonging a discussion that would be academic, I have confirmed with the Secretary's IT support that no e-mails from [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) for the time period January 21, 2009 through February 1, 2013 reside on the server or on any back-up systems associated with the server. Thus, there are no [hdr22@clintonemail.com](mailto:hdr22@clintonemail.com) e-mails from Secretary Clinton's tenure as Secretary of State on the server for any review, even if such review were appropriate or legally authorized.

As set forth above, all of Secretary Clinton's work-related and potentially work-related e-mails were provided to the State Department on December 5, 2014. Secretary Clinton has asked the Department to release these e-mails to the public as soon as possible. We understand that the State Department is working on completing procedures necessary for the release of those e-mails, and the Committee—and the public—will have access to them when that process is complete.

Sincerely,



David E. Kendall

cc: The Honorable Elijah Cummings  
Dana K. Chipman, Esq.  
Heather Sawyer, Esq.  
The Honorable Patrick F. Kennedy



# ATTACHMENT

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**UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON**

MAR 23 2015

Dear Mr. Kendall,

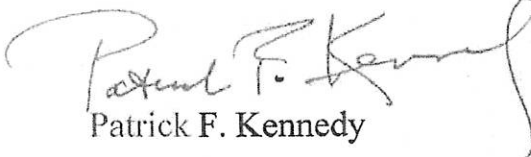
I am writing in reference to the approximately 55,000 pages of electronic mail that were identified as potential federal records and produced on behalf of former Secretary Clinton to the Department of State on December 5, 2014 in response to its request for assistance under the Federal Records Act.

We understand that Secretary Clinton would like to continue to retain copies of the documents to assist her in responding to congressional and related inquiries regarding the documents and her tenure as head of the Department. The Department has consulted with the National Archives and Records Administration (NARA) and believes that permitting Secretary Clinton continued access to the documents is in the public interest as it will help promote informed discussion. Accordingly, Secretary Clinton may retain copies of the documents provided that: access is limited to Secretary Clinton and those directly assisting her in responding to such inquiries; steps are taken to safeguard the documents against loss or unauthorized access; the documents are not released without written authorization by the Department; and there is agreement to return the documents to the Department upon request. Additionally, following NARA's counsel, we ask that, to the extent the documents are stored electronically, they continue to be preserved in their electronic format. In the event that State Department reviewers determine that any document or documents is/are classified, additional steps will be required to safeguard and protect the information. Please note that if Secretary Clinton wishes to release any document or portion thereof, the Department must approve such release and first review the document for information that may be protected from disclosure for privilege, privacy or other reasons.

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

I would appreciate it if the Secretary or her designee would confirm agreement to the conditions described above in writing as soon as possible.

Very truly yours,

  
Patrick F. Kennedy