

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

August 22, 2016

The Honorable James Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Director Comey:

On July 24, 2015, Charles McCullough, Inspector General of the Intelligence Community (IC IG), and Steve Linick, Inspector General of the Department of State (State IG), released a statement regarding their review of former Secretary Hillary Clinton's emails. It stated, in part:

IC IG made a referral detailing the potential compromise of classified information to security officials within the Executive Branch. The main purpose of the referral was to notify security officials that classified information may exist on at least one private server and thumb drive that are not in the government's possession.<sup>1</sup>

On July 7, 2016, the Committee held a hearing on Secretary Clinton's use of a personal, non-official email account during her tenure as Secretary of State. During the hearing, where you testified about the FBI investigation of that matter, Mr. McCullough and Mr. Linick testified on a separate panel about their review, among other things. Mr. McCullough testified:

I was advised by Mr. Linick's office that this whole set of emails was present on a thumb drive in Secretary Clinton's attorney's office. We knew nothing about the clearances for counsel or for the law firm. And I was also advised that this set of documents previously resided on a private server, which at that point in time was with a private company. So as an IG, I was facing a situation where I had classified information, it appeared to me, outside the care, custody, and control of the U.S. Government. In

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<sup>1</sup> *Statement from the Inspectors General of the Intelligence Community and the Department of State Regarding the Review of Former Secretary Clinton's Emails (July 24, 2015)*, available at [https://oig.state.gov/system/files/statement\\_of\\_the\\_icig\\_and\\_oig\\_regarding\\_review\\_of\\_clintons\\_emails\\_july\\_24\\_2015.pdf](https://oig.state.gov/system/files/statement_of_the_icig_and_oig_regarding_review_of_clintons_emails_july_24_2015.pdf).

the intelligence community what you do when that happens is you tell the security component of the agency who owns that information. In this case, I told the agencies who owned the information, I also told the ODNI's security component, the NCSC, and I was advised to go directly to the FBI with a referral . . . .<sup>2</sup>

Shortly after the IC IG's referral to the FBI, the Justice Department took possession from Secretary Clinton's attorneys of the thumb drive in question, along with two copies.<sup>3</sup>

During your testimony on July 7, 2016, I asked you: "Did Hillary Clinton give noncleared people access to classified information?" You responded: "Yes. Yes."<sup>4</sup> You also testified:

CHAFFETZ: Did Secretary Clinton's attorneys have the security clearances needed?

COMEY: They did not.

CHAFFETZ: Does that concern you?

COMEY: Oh, yeah. Sure.

CHAFFETZ: Is there any consequence to an attorney rifling through Secretary Clinton's, Hillary Clinton's emails without a security clearance?

COMEY: Well, not necessarily criminal consequences, but there's a great deal of concern about an uncleared person, not subject to the requirements we talked about in the read-in documents, potentially having access. That's why it's very, very important for us to recover everything we can back from attorneys.<sup>5</sup>

Just as classified information may not be provided to anyone without an appropriate clearance, classified information must also not be stored on a computer system that is not authorized to store it. The transfer of classified information from a computer system authorized to store it to one that is not is called spillage. The *National Instruction on Classified Information Spillage*, developed by the Committee on National Security Systems,

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<sup>2</sup> H. Comm. on Oversight & Gov't Reform, *Oversight of the State Department: Hearing before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. 201-202 (July 7, 2016).

<sup>3</sup> See letter from David E. Kendall to Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Aug. 12, 2015), at 2.

<sup>4</sup> H. Comm. on Oversight & Gov't Reform, *Oversight of the State Department: Hearing before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. 183 (July 7, 2016).

<sup>5</sup> *Id.* at 180.

states: “If . . . a spillage has occurred, immediate steps shall be taken to contain and prevent further spillage of classified information.”<sup>6</sup> According to the instruction: “When the media is released from agency control, sanitization is required.”<sup>7</sup> For sanitizing devices that hold information classified up to TOP SECRET, including Sensitive Compartmented Information, the National Security Agency’s internal protocols require one of three options: “disintegrat[ion] into particles that are . . . 2 millimeter,” “incineration reducing [the device] to ash,” or degaussing (essentially, demagnetization, though with degaussing NSA notes “it is highly recommended to physically damage the hard disk drive by deforming the internal platters prior to release by any means or by using a hard disk drive crusher”).<sup>8</sup>

Further, you testified that other people without clearances also had access to the Secretary’s private email server for its setup and maintenance. You stated:

COMEY: There’s no doubt that uncleared people had access to the server, because even after Pagliano, there were others who maintained the server who were private sector folks.

CHAFFETZ: So there are hundreds of classified documents on these servers. How many people without a security clearance had access to that server?

COMEY: I don’t know the exact number as I sit here. It’s probably more than 2, less than 10.

CHAFFETZ: And I appreciate your willingness to follow up with this.<sup>9</sup>

During the hearing, I requested the case file from the FBI’s now-closed investigation of this matter. On July 11, 2016, I memorialized that request in writing. Thank you for producing some of those materials last week. Based on my review of those records, and to answer some of the outstanding questions from the hearing, please also provide the following:

1. Information as to whether the FBI investigated the possibility that Secretary Clinton’s classified emails were improperly stored or accessed by her personal representatives or by individuals at Williams & Connolly LLP, including on any unauthorized electronic devices or media, such as desktops or servers, and the Bureau’s conclusion if it did investigate that;

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<sup>6</sup> *National Instruction on Classified Information Spillage*, Comm. on Nat’l Sec. Systems, at 3.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> “NSA/CSS Storage Device Sanitization Manual,” NSA/CSS Policy Manual 9-12, Central Sec. Serv., Nat’l Sec. Agency (Dec. 15, 2014), *available at* <https://www.nsa.gov/resources/everyone/media-destruction/assets/files/storage-device-declassification-manual.pdf>.

<sup>9</sup> H. Comm. on Oversight & Gov’t Reform, *Oversight of the State Department: Hearing before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. 179-180 (July 7, 2016).

2. An inventory of the electronic devices and media and physical documents obtained from Clinton's representatives, including but not limited to Williams & Connolly during its investigation;
3. A description of the manner in which Clinton's personal representatives and individuals at Williams & Connolly stored any electronic devices and media and physical documents containing Secretary Clinton's classified emails, including both when they were in use and when they were not in use, and the Bureau's assessment of whether that met applicable security requirements;
4. From January 21, 2009 to the time the FBI obtained custody of the servers or backups of Secretary Clinton's emails:
  - a. The physical location in which each server, backup or other email storage device ("servers or backups") was used and later stored;
  - b. The name of all companies or individuals who had access to any of the servers or backups;
  - c. The name, title, and employer of each individual outside the government who had access to any of the servers or backups or her emails, and the range of dates during which they had access;
  - d. Whether each of those individuals held a security clearance, what level of information each individual was cleared for, and on what date the individual received clearance or indoctrinations for each level of information (including interim clearances);
5. What steps were taken to remediate any possible spillage of classified information stored on electronic media or in any of the other various locations in which Secretary Clinton's emails were stored and accessed;
6. Whether the FBI informed Secretary Clinton of the classified findings in its investigation and, if so, when;
7. Whether the FBI is conducting any other related investigations, or has attempted to do so, and the current status of each such investigation;
8. Whether the FBI referred any of its findings to any other agency for review for potential security violations or misconduct or disciplinary proceedings;
9. Whether the FBI was ever denied access to information requested as part of the investigation, on the basis of privilege or classification, and a list and description of each such incident including privilege log(s) if applicable;
10. The legal basis for the FBI's redactions and omissions, including:

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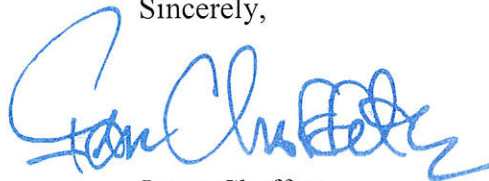
- a. whether such information is subject to dissemination controls that prevent the FBI from sharing such information with the Committee;
  - b. the reasons for redactions and omissions in the production of August 15, 2016, that were not in the production of August 16, 2016; and
11. An unclassified copy of the documents provided to the Committee on August 16, 2016, with all classified information redacted.

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.

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.

Please have your staff contact Tristan Leavitt or Liam McKenna of Chairman Chaffetz’ staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member



## 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.

### **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.