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United States Senate

COMMITTEE ON THE JUDICIARY

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January 27, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Steve A. Linick
Inspector General
Office of Inspector General
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Mr. Linick:

On January 7, 2015, the Department of State Inspector General (State IG) released an evaluation titled, "Evaluation of the Department of State's FOIA Processes for Requests Involving the Office of the Secretary." On January 6, 2016, your office briefed Senate staff on the scope, methodology, findings, and recommendations. I appreciate your efforts to keep the Committee informed of State IG evaluations and reports.

Based on the information and findings contained in the evaluation, it is clear that systemic failures exist within the Department of State's Freedom of Information Act response process. By way of example, the evaluation noted that "the Department took four and-half times as long—an average of 91 days to process simple requests and almost 535 days to process complex requests" as compared to average processing times for simple and complex process requests across the government, which were 20.5 days and 119 days, respectively.¹ Further, the findings show that the Secretary's Executive Secretariat (S/ES), "rarely searched electronic email accounts prior to 2011 and still does not consistently search these accounts, even when relevant records are likely to be uncovered through such a search."² Perhaps most troubling is the finding that State FOIA searches are inaccurate and incomplete and that "FOIA requesters have been able to produce evidence of the existence of records responsive to a FOIA request despite the attestation by S/ES that no responsive records existed."³

¹ State Department Inspector General, *Evaluation of the Department of State's FOIA Processes for Requests Involving the Office of the Secretary*, ESP-16-01, p. 6 (January 2016).

² *Id.* at 9.

³ *Id.* at 13.

On page 14 and 15 of the evaluation, your report provides an example of a misleading response provided by the Department to a FOIA requester. In December 2012, Citizens for Responsibility and Ethics in Washington (CREW) submitted a FOIA request for records “sufficient to show the number of email accounts of, or associated with, Secretary Hillary Rodham Clinton, and the extent to which those email accounts are identifiable as those of or associated with Secretary Clinton.” The Department responded, stating “no records responsive to your request were located.”

At that time, and as the evaluation notes, Secretary Clinton’s senior staff and several senior officials throughout the Department knew that Secretary Clinton was using a personal email address to conduct official business. According to a briefing by your staff, Mr. Brock Johnson, a spokesman at the Department in 2012, emailed CREW’s FOIA request to Ms. Cheryl Mills, Secretary Clinton’s Chief of Staff. After Ms. Mills received the request, she transmitted it to Ms. Heather Samuelson, a Senior Advisor and White House Liaison at the Department, instructing her to make queries as to the status of the Department’s response to the FOIA request. Ms. Samuelson then tasked it to Mr. Josh Dorosin, a State Department attorney.

According to the briefing provided by your staff, when State IG attorneys investigating this matter approached Ms. Mills, she, through her attorney, refused to speak with them. Mr. Dorosin did speak with the investigating State IG attorneys, but when asked about the specific CREW-FOIA tasking he reportedly claimed that he had no recollection of the matter. It is not clear whether Ms. Samuelson or Mr. Johnson were interviewed.

In fact, Ms. Mills and senior Department officials knew about Secretary Clinton’s use of private email for official correspondence because they were sending official emails to her non-government email address. They would have known instantly of records responsive to that request. Yet, it was approximately five months later before the Department officially responded to CREW’s request for email accounts associated with Secretary Clinton. And its response was misleading, at best: “no records responsive to your request were located.”⁴

As noted in the Department of Justice’s *Guide to the Freedom of Information Act*, in FOIA litigation an agency often faces challenges to the nature and extent of its search for responsive documents.⁵ Agencies generally demonstrate to the court the adequacy of their FOIA searches by filing declarations stating that the search method was reasonably calculated to uncover all relevant documents, and averring that all files reasonably expected to contain the requested records, were, in fact, searched.⁶ Your evaluation states that Department attorneys recalled several other instances when FOIA searches yielded inaccurate or incomplete results. Yet, “S/ES has not taken any corrective actions to ensure the accuracy and completeness of FOIA searches.” It further reported that “searches performed by S/ES do not consistently meet statutory and regulatory requirements for completeness.” Accordingly, the evaluation warned

⁴ *Id.*

⁵ Department of Justice, *Guide to the Freedom of Information Act* 754-59 (2009), available at: http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/litigation-considerations_0.pdf

⁶ *Id.*

that in FOIA litigation “[t]he Department and its leadership could [] be subject to contempt citations if they were found to have violated rules requiring candor to the court.”⁷ In light of these findings, there is a real potential that some Department officials may have provided false declarations to federal courts when they attested to taking all reasonable steps to provide complete and accurate FOIA responses.

As you are aware, this Committee exercises jurisdiction over the Freedom of Information Act. As such, it is imperative to understand the full range of facts and circumstances discussed in the report to fully understand the FOIA compliance failures, shortcomings, and any potential steps toward improvement.

To assist in keeping the Committee informed, please answer the following:

1. Please provide all records relating to the interview of Mr. Josh Dorosin.
2. Please provide all records relating to the State IG’s attempt to interview Ms. Mills.
3. Did the State IG interview, or attempt to interview, Ms. Samuelson? If not, why not? If so, please provide all records related to that interview.
4. Did the State IG interview, or attempt to interview, Mr. Johnson? If not, why not? If so, please provide all records related to that interview.
5. Did the State IG interview Under Secretary of Management, Patrick Kennedy? If not, why not? If so, please provide all records relating to that interview.
6. CREW filed their FOIA request with the Department in December 2012. The Department responded on May 10, 2013. Why was the response to CREW delayed as long as it was?
7. The evaluation notes, “OIG found no evidence to indicate that any of these senior officials [the officials that emailed Secretary Clinton’s personal accounts] reviewed the search results or approved the response to CREW.” Did anyone responsible for conducting the search or responding to CREW attempt to speak to Ms. Mills or other senior staff who would have been aware that such accounts and records existed to seek assistance in locating them?

⁷ *Supra* note 1 at 13, 14.

8. The evaluation notes, "OIG also found no evidence that S/ES, L, and IPS staff involved in responding to requests for information, searching for records, or drafting the response had knowledge of the Secretary's email usage."
 - a. Why did the search conducted by those staff fail to uncover even a single copy of the 55,000 records that former Secretary Clinton later provided to the Department, given that many of those records were duplicates of emails in the State Department systems?
 - b. What was the basis for the representation to CREW implying that there were no responsive records? What searches *were* conducted?

9. What steps will you take to determine whether the Department should correct its false declarations in various FOIA cases in light of your findings?

The Committee is making a concurrent request with the Department of State to produce all emails that refer or relate to Secretary Clinton's email address or the CREW-FOIA request. As such, the Committee requests that your office coordinate with the Department in order to timely produce the relevant documentation to the Committee. Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions and respond no later than February 10, 2016. If you have questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary