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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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February 1, 2016

**VIA ELECTRONIC TRANSMISSION**

The Honorable Ashton Carter  
Secretary of Defense  
Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301

Dear Secretary Carter:

On December 16, 2015, the New York Times reported that you used a personal email account to conduct official government business as Secretary of Defense.<sup>1</sup> You have since acknowledged that the use of private email was a “mistake,” but maintained that no classified information was involved.<sup>2</sup> However, according to news reports, the high volume of official business conducted through your personal email account caused your staff concern about potential hacks.<sup>3</sup>

This Committee is currently investigating Secretary Clinton’s use of a private email server for official purposes and its effect on Freedom of Information Act (FOIA) compliance. In addition, the Committee is looking into potential compromises of classified information due to Secretary Clinton’s email arrangement. It is troubling to learn of your use of personal email for official matters, especially since you continued using that arrangement even after the risks of private use were made clear when news of Secretary Clinton’s use broke in March 2015.

The National Archives and Records Administration (NARA) issued bulletin 2013-03 on September 9, 2013.<sup>4</sup> That bulletin makes clear that government employees should not use personal email accounts to conduct official agency business except in emergency situations. If

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<sup>1</sup> Michael S. Schmidt, “Defense Secretary Conducted Some Official Business on a Personal Email Account,” THE NEW YORK TIMES (Dec. 16, 2015). Available at [http://www.nytimes.com/2015/12/17/us/politics/defense-secretary-ashton-carter-conducted-some-official-business-on-a-personal-email-account.html?\\_r=1](http://www.nytimes.com/2015/12/17/us/politics/defense-secretary-ashton-carter-conducted-some-official-business-on-a-personal-email-account.html?_r=1)

<sup>2</sup> Charlie D’Agata interview with Secretary Carter, CBS News (Dec. 17, 2015). Available at <http://www.cbsnews.com/videos/defense-secretary-carter-regrets-using-personal-email-account/>

<sup>3</sup> *Supra* note 1.

<sup>4</sup> National Archives and Record Administration, Bulletin 2013-03.

personal email is used to conduct official business, the employee must ensure that all federal records are captured by government systems. Federal law states that government employees “may not create or send a record using a non-official electronic messaging account” unless that employee copies an official government account or forwards a complete copy of the email to a government account no later than 20 days after transmission.<sup>5</sup> And Defense Department Instruction 8550-01 prohibits the use of personal accounts for official business.<sup>6</sup>

In addition, the use of private email for work related matters can directly interfere with FOIA compliance. Importantly, the use of private email in this context exposes the information to possible hacks and intrusions by foreign intelligence agencies. As the Secretary of Defense, you are inevitably a prime target for foreign hackers. As such, the threat is real and compliance with the law is essential.

In order to better understand the facts and circumstances of this matter, please answer the following:

1. Have you provided all emails you sent from a personal device for official government business while Secretary of Defense to the Department for federal records preservation purposes? If so, when did you do so, how many did you provide, and when did you provide them? If not, please explain why not.
2. Why did you use a personal electronic device with a personal email address rather than your assigned government email address?
3. Has a classification review been conducted on the emails to determine whether you ever sent or received classified information on a personal device using a personal email address? If so, please provide a detailed explanation of who conducted the review and its results. If not, please explain why not.
4. After being confirmed as Secretary of Defense, when did you begin using a personal email address for official business? When did you begin using a government email address for official business? When did you cease using a personal email address for official business?
5. What training and employment paperwork did you receive prior to beginning work as Secretary of Defense that related to the use of electronic communication and prohibitions on the use of personal email to conduct official government business? Please provide a copy of any paperwork documenting that training and your understanding of federal rules and regulations on this subject.
6. While using your private email for official business, what actions, if any, did you take to ensure compliance with federal recordkeeping requirements?

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<sup>5</sup> 44 U.S.C. § 2911, “Disclosure requirement for official business conducted using non-official electronic messaging accounts.”

<sup>6</sup> Defense Department Instruction 8550-01, p. 32.

7. Other than acknowledging this practice as a mistake, what steps have you taken to see it is not repeated or followed by anyone else in your Department?
8. Has DoD or any other agency conducted any audit or investigation to determine whether your personal email accounts were compromised during the period you were using them to conduct government business or whether your personal use of an iPhone compromised your personal security by potentially revealing your location? Please provide a copy of any reports documenting these reviews.

To the greatest extent possible, please provide unclassified responses to the questions; should a complete response to any question require that you send classified information, you may send that information under separate cover, via the Office of Senate Security. Please number your responses according to their corresponding questions and respond no later than February 16, 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

Cc:

The Honorable Glenn Fine  
Acting Inspector General  
Department of Defense  
4800 Mark Center Drive  
Alexandria, VA, 22350