



**Judicial
Watch®**
*Because no one
is above the law!*

April 30, 2015

VIA CERTIFIED MAIL

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520

Re: Violation of the Federal Records Act

Dear Secretary Kerry:

I am writing to you on behalf of Judicial Watch, Inc. (“Judicial Watch”), a not-for-profit educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. In furtherance of its public interest mission, Judicial Watch regularly requests access to the records of the State Department through the Freedom of Information Act and disseminates its findings to public. Currently, Judicial Watch has dozens of such requests for records pending, all of which relate to communications of former Secretary of State Clinton. Subjects of these requests range from the Benghazi consulate attack to donations to the Clinton Foundation while Secretary Clinton was in office.

As you are no doubt aware, on or about March 2, 2015, the *New York Times* reported that former Secretary of State Clinton used at least one non-“state.gov” e-mail account to conduct official government business while serving as U.S. Secretary of State. It also reported that Secretary Clinton stored these emails on a server at her home in Chappaqua, New York. According to other reports, other high level State Department officials also reportedly used non-“state.gov” email accounts to conduct official government business including Cheryl Mills, Philippe Reines, Huma Abedin, and Jake Sullivan.

Even though the messages may have been sent through non-“state.gov” email accounts, these e-mails are agency records subject to the Federal Records Act. 44 U.S.C. §§ 2101-18, 2901-09, 3101-07, 3301-14. The State Department’s failure to retain and manage these agency records has compromised the Department’s retention of records that concern or relate to the Secretary and other high level State Department officials who used non-“state.gov” email addresses.

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As you may be aware, the Federal Records Act imposes a direct responsibility on you as an agency head to take steps to recover any records unlawfully removed from the State Department. Specifically, upon learning of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency,” you must notify the Archivist of the United States. 44 U.S.C. § 3106. Upon learning that records have been unlawfully removed from State Department, you then are required initiate action through the Attorney General for the recovery of records. *Id.*

In the event you fail to take these steps, you should be aware that Judicial Watch is authorized under the law and ready to file a lawsuit in federal district court seeking that you be compelled to comply with the law. *Armstrong v. Bush*, 924 F.2d 282, 296 (D.C. Cir. 1991). Please advise us no later than May 15, 2015 if you intend to take the action required under the law. If we do not hear from you by that date, we will assume that you do not intend to take any action. Thank you for your attention to this matter.

Sincerely,



Thomas J. Fitton
President