

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 13-cv-1363 (EGS)
)	
v.)	
)	
U.S. DEPARTMENT OF STATE,)	
)	
Defendant.)	

**PLAINTIFF’S NOTICE OF PERTINENT INFORMATION
IN ADVANCE OF TOMORROW’S STATUS HEARING**

Plaintiff Judicial Watch, Inc., by counsel, respectfully submits this notice:

1. Time and again, the State Department has been less than forthcoming with the Court and Plaintiff. Plaintiff continues to learn of new information in dribs and drabs through the media. These revelations undercut information provided by the State Department in this litigation.

2. ***First***, On August 10, 2015, the State Department submitted to this Court a declaration signed by former Secretary Clinton. In her declaration, Mrs. Clinton testified that she “directed that all [her] e-mails on clintonemail.com in [her] custody that were or potentially were federal records be provided to the Department of State, and on information and belief, this has been done.” *See* Attachment to Supplement to Defendant’s August 7, 2015 Status Report.

3. Based on this testimony, Defendant asserts that it “does not believe that a reasonable search for records responsive to plaintiff’s FOIA request requires a search of former Secretary Clinton’s server.” *See* Defendant’s August 14, 2015 Status Report at 3.

4. Yet, on September 25, 2015, CNN reported, “An email chain between former Secretary of State Hillary Clinton and then-commander of U.S. Central Command David Petraeus from January and February 2009 is raising questions about whether some of the emails on Clinton's private email server were mistakenly deemed personal and not included among the 55,000 pages of emails she turned over to the State Department.” *See* Elise Labott and Ross Levitt, *New Hillary Clinton email chain discovered*, CNN (Sept. 25, 2015, available at <http://www.cnn.com/2015/09/25/politics/hillary-clinton-emails-david-petraeus-benghazi>). CNN also reported that “the end of the email chain contained messages” sent or received on the clintonemail.com email account. *Id.* In addition, CNN received a statement from State Department spokesman John Kirby in which Mr. Kirby confirmed that the State Department received “several copies of one email chain between former Secretary Clinton and then Commander of U.S. Central Command David Petraeus which were not previously in the possession of the Department.” *Id.*

5. In addition, prior to the discovery of the emails between Mrs. Clinton and Mr. Petraeus, Mrs. Clinton asserted – which has now been proven to be incorrect – that “she did not begin using a clintonemail.com [email] address for State Department business until” March 2009. Amy Chozick, *Hillary Clinton Says She Cannot Explain Why Previously Undisclosed Emails Turned Up*, The New York Times (Sept. 27, 2015, available at <http://www.nytimes.com/politics/first-draft/2015/09/27/hillary-clinton-says-she-cannot-explain-why-previously-undisclosed-emails-turned-up/>).

6. Although it now has knowledge that Mrs. Clinton failed to turn over all emails sent or received using a clintonemail.com email account that are potentially federal records, the State Department has not notified the Court of this development.

7. **Second**, on July 31, 2015, the Court, in part, ordered the State Department to produce copies of all correspondence from the State Department to Mrs. Clinton about government records in her possession. *See* July 31, 2015 Minute Order. On August 6, 2015, the State Department produced, among other documents, a November 12, 2014 letter from Mr. Patrick Kennedy to Ms. Cheryl Mills concerning Mrs. Clinton's collection of government records in her possession. *See Notice of Filing by Department of State*. No other correspondence was produced from the State Department to Mrs. Clinton or her representatives.

8. Yet, the Washington Post recently reported that communications did occur between the State Department and Mrs. Clinton prior to the November 12, 2014 letter. *See* Carol D. Leonnig and Rosalind S. Helderman, *State Department's account of e-mail request differs from Clinton's*, The Washington Post (Sept. 22, 2015, available at http://www.washingtonpost.com/politics/state-departments-account-of-e-mail-request-differs-from-clintons/2015/09/22/54cd66bc-5ed9-11e5-8e9e-dce8a2a2a679_story.html). Specifically, State Department Spokesman John Kirby stated, "State Department officials contacted her representatives during the summer of 2014 to learn more about her email use and the status of emails in that account." *Id.*

9. Plaintiff subsequently requested that the State Department confirm that it complied with the Court's July 31, 2015 order and produced all correspondence from the State Department to Mrs. Clinton about government records in her possession. In addition, Plaintiff requested that if additional correspondence does exist and it has not yet been produced that the State Department promptly provide Plaintiff with copies. In response, the State Department asserts that it was only ordered to provide the November 12, 2014 letter to Plaintiff and refused

to provide copies of any additional correspondence to the Court and Plaintiff or even advise the Court of their existence.

10. ***Third***, after being ordered to initiate a dialogue with the FBI, on September 21, 2015, the State Department submitted a letter from the FBI that stated, “At this time, consistent with long-standing Department of Justice and FBI policy, we can neither confirm nor deny the existence of any ongoing investigation, nor are we in a position to provide additional information at this time.” *See* Defendant’s Status Report at 2.

11. Yet, on September 30, 2015, “FBI director James Comey told reporters . . . that he is ‘personally following closely’ an investigation into former Secretary of State Hillary Clinton’s private email server.” *See* Pete Williams, *FBI Director Acknowledges Agency Looking into Clinton Emails*, NBCNews (Oct. 1, 2015, available at <http://www.nbcnews.com/news/us-news/fbi-director-acknowledges-agency-looking-clinton-emails-n437061>). The State Department however has not updated the Court with this latest information.

12. The Court and Plaintiff patiently have waited as the State Department has been less than forthcoming. It has been over two months since the initial status hearing and we still do not know whether any copies of the emails sent or received by Mrs. Clinton and Ms. Abedin using a clintonemail.com email account during their four years of employment at the State Department exist, and, if so, where they exist.

13. We also do not know whether the FBI – or any other government agency for that matter – has possession of the email server that was used by Mrs. Clinton and Ms. Abedin to conduct official government business during their four years of employment at the State Department. Nor do we know whether the server purportedly in the possession of the FBI – an assumption based on unsworn statements by third parties – is the actual email server that was

used by Mrs. Clinton and Ms. Abedin to conduct official government business during their four years of employment at the State Department or whether it is a copy of such an email server.

14. Plaintiff looks forward to addressing these issues during tomorrow's status hearing in an effort to resolve this case in a timely and efficient manner.

Dated: October 5, 2015

Respectfully submitted,

/s/ Michael Bekesha
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