

**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 MOTION TO DEPOSE  
HILLARY CLINTON, CLARENCE FINNEY, AND JOHN BENTEL**

Plaintiff Judicial Watch, Inc., by counsel and pursuant to the Court’s May 4, 2016 Memorandum and Order, respectfully moves for the depositions of Hillary Clinton, Clarence Finney, and John Bentel. As grounds therefor, Plaintiff states as follows:

**STATEMENT OF POINTS AND AUTHORITIES**

This Court has concluded that “questions surrounding the creation, purpose and use of the clintonemail.com server must be explored through limited discovery before the Court can decide, as a matter of law, whether the Government has conducted an adequate search in response to Judicial Watch’s FOIA request.” May 4, 2016 Memorandum and Order (“Order”) at 1. In an attempt to uncover admissible evidence to shed light on these questions and based on the limited information known at the time, Plaintiff submitted a narrowly tailored discovery plan that identified eight individuals Plaintiff sought to depose. After discussions with Defendant, Plaintiff narrowed the list of deponents to seven. The Court approved the parties’ jointly submitted discovery plan on May 4, 2016.

The authorized discovery concluded on June 29, 2016, within the time period allowed by the Court. Plaintiff took the depositions of the seven witnesses, obtained answers to its interrogatories, and received certain documents identified in the May 2016 Office of the Inspector General (“OIG”) report. Transcripts and videotapes of the depositions, as well as the May 2016 OIG report, have been provided to the Court, and the interrogatory answers and documents referenced above are attached as exhibits to this motion.<sup>1</sup> Although significant progress has been made in uncovering evidence concerning the creation and use of the clintonemail.com system and the State Department’s approach and practice for processing FOIA requests potentially implicating Secretary Clinton’s and Ms. Abedin’s emails, important questions remain concerning whether the State Department and Secretary Clinton attempted to deliberately thwart FOIA by creating and using an off-grid record system to conduct official State Department business.

In its Order, the Court directed that “Plaintiff must seek the Court’s permission to conduct discovery beyond the depositions and the interrogatories” identified by the parties. Order at 15. The Court also stated, “Based on information learned during discovery, the deposition of Mrs. Clinton may be necessary. If Plaintiff believes Mrs. Clinton’s testimony is required, it will request permission from the Court at the appropriate time.” *Id.* at 14. After concluding the discovery authorized by the Court, Plaintiff believes it is necessary to depose three additional witnesses: Secretary Clinton, Clarence Finney, and John Bentel.<sup>2</sup>

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<sup>1</sup> Defendant’s Responses and Objections to Plaintiff’s Interrogatories are attached as Exhibit 1. The documents identified in the May 2016 OIG report are attached as Exhibit 2.

<sup>2</sup> Plaintiff intends to depose these individuals within four weeks of the Court’s order on Plaintiff’s motion. Plaintiff anticipates that no additional discovery will be needed in this case.

**I. Hillary Clinton.**

Plaintiff still does not have definitive answers as to why Secretary Clinton created the clintonemail.com system, why she continued to use the system even though it malfunctioned at times and interfered with her and other State Department officials' ability to perform their official duties, what Secretary Clinton understood were her federal recordkeeping and FOIA obligations with respect to her official emails, the inventorying of Secretary Clinton's records at the conclusion of her tenure in office, and what exactly was Mr. Pagliano's role in creating and operating the clintonemail.com system. Secretary Clinton's necessary to try to definitively answer these and other questions.

*The purpose for the clintonemail.com system.* Plaintiff anticipated that Ms. Mills and Ms. Abedin might provide testimony about why Secretary Clinton created and used the clintonemail.com system to conduct official government business. However, neither Ms. Mills nor Ms. Abedin spoke with Secretary Clinton about the purpose for the clintonemail.com system. *See* Mills Deposition at 45:7 – 45:20; *see also* Abedin Deposition at 71:16 – 73:2. Both could only testify that they understood Secretary Clinton's use of the clintonemail.com system to conduct official government business was a continuation of her general practice of using a personal email account to conduct government business. *See* Mills Deposition at 45:7 – 45:20; *see also* Abedin Deposition at 71:16 – 73:2. They only understood this to be the case because they started receiving emails from Secretary Clinton from the clintonemail.com email address in the normal course of business. *See* Mills Deposition at 45:7 – 45:20; *see also* Abedin Deposition at 71:16 – 73:2. Therefore, neither witness could provide evidence about why Mrs. Clinton continued this practice as Secretary of State. *Id.* This is especially significant because, as a U.S.

senator, Mrs. Clinton's emails were not subject to federal recordkeeping statutes or FOIA. As Secretary of State, however, Mrs. Clinton's emails conducting official government business were subject to federal recording keeping statutes and FOIA.<sup>3</sup> Moreover, although Secretary Clinton made extensive use of her unofficial email account to conduct official, State Department business, Ambassador Lukens testified that he believed she used the account to communicate with friends and family only, and Ambassador Mull testified that he did not know whether Secretary Clinton was using the account for personal or official business and had no basis for knowing what she was using her BlackBerry for. Lukens Deposition at 82:19-22; Mull Deposition at 132:8 – 133:5. Both these witnesses were from the Executive Secretariat – the office charged with managing the secretary's records, and their testimony raises questions about what they and others were told about the purpose of the system. Accordingly, Secretary Clinton's testimony is necessary to determine the purpose for the creation and use of the clintonemail.com system and what the department was told about the purpose of the account.

*Secretary Clinton's continued use of the system even though, at times, it interfered with her job as secretary.* The clintonemail.com system appears to have suffered from multiple, repeated technical problems, weather related disruptions, and known incidents of hacking. *See, e.g.,* Mull Deposition at Exhibits 5 and 6; Exhibit 2 at documents B, D, and E. On one occasion, a technical problem with the system caused Secretary Clinton missed a telephone call with a foreign minister because an email from the clintonemail.com system never made its way to the appropriate State Department employees. *See* Abedin Deposition at 184:21 – 185:4. Both

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<sup>3</sup> Importantly, Ms. Abedin testified that she knew that her emails on the clintonemail.com system relating to official government business were subject to FOIA. *See* Abedin Deposition at 115:9 – 115:16.

Secretary Clinton and Ms. Abedin were frustrated by the failure. *Id.* at 185:15 – 186:1. During the incident, Mrs. Clinton commented to Ms. Abedin in an email, “This is not a good system.” *See* Exhibit 2, document B. Ms. Abedin responded, “We should talk about putting you on state email or releasing your email address to the department so you are not going to spam.” *Id.* Mrs. Clinton replied, “Let’s get separate address on device but I don’t want any risk of the personal being accessible.” *See* Exhibit 2, document B.

Secretary Clinton continued to use her clintonemail.com system, however, and one month later the systems suffered from another set of technical issues that caused Ms. Abedin contacted the Office of Information Resource Management of the Executive Secretariat (“S/ES-IRM”). *See* Exhibit 2, document D. In response, S/ES-IRM worked with the State Department’s general information technology department to resolve issues affecting the ability of emails transmitted through Secretary Clinton’s email account to reach State Department officials and employees using their state.gov email accounts. *See id.* The following month, the system had to be shut down because of hacking, causing Ms. Abedin to email Ms. Mills and Jacob Sullivan, “Don’t email [Secretary Clinton] anything sensitive. I can explain more in person.” Exhibit 2 at document E. Secretary Clinton’s testimony is necessary to determine why she continued using this flawed system to conduct official government business in light of these and other difficulties with the system.

*Mrs. Clinton’s understanding of her federal recordkeeping and FOIA obligations.*

Plaintiff believed that Executive Secretary Mull or other current State Department could testify as to whether Secretary Clinton understood her federal recordkeeping and FOIA obligations with respect to her emails conducting official government business. However, no witness was able to

testify as to whether Secretary Clinton was advised to use a state.gov email account to conduct official government business or whether the State Department authorized Secretary Clinton to use a non-state.gov email account to conduct official government business. *See e.g.*, Mull Deposition at 86:7 – 86: 19 and Abedin Deposition at 36:5 – 36:18; 78:5 – 78:11. Similarly, no witness was able to testify as to whether Secretary Clinton knew her FOIA obligations with respect to the emails she used to conduct official government business. *See e.g.*, Abedin Deposition at 115:17 – 116:3. Ms. Abedin also testified that, in order to get an answer to that question, Plaintiff “would have to ask Mrs. Clinton.” *See id.* Ms. Abedin also testified that she did not know how Secretary Clinton managed her clintonemail.com inbox during her tenure as secretary or whether she deleted emails conducting official government business. *See* Abedin Deposition at 121:12 – 121:14. Whether Secretary Clinton understood her federal recordkeeping and FOIA obligations with respect to her emails and whether she preserved her emails are important questions in determining whether the secretary and the State Department deliberately thwarted FOIA. Mrs. Clinton’s testimony is necessary for these additional reasons.

*Mrs. Clinton’s inventorying of records upon completion of her tenure as secretary.* Prior to Ms. Abedin’s testimony, Plaintiff was not aware of a meeting between Mr. Finney, Ms. Abedin and others from the Office of the Secretary about what records Secretary Clinton and her staff were allowed to take with them when they left the State Department with at the end of Secretary Clinton’s tenure. *See* Abedin Deposition at 46:3 – 46:17; 135:18 – 141:22. For example, at the meeting, Mr. Finney informed the staff that they were required to return their blackberries and “that the only materials we were allowed to leave with the State Department were our personal photos that may have been taken on our State Department blackberries . . . and

our contacts.” *See id.* at 137:11 – 137:17. Importantly, those in the meeting were the “the support staff managing the [] paper records that Secretary Clinton had [] accumulated over her time at the State Department [a]nd the staff was doing that on behalf of her paper records, as well.” *See id.* at 141:18 – 141:22. In addition, Ms. Abedin testified that she is not aware of any instructions provided by Secretary Clinton with respect to State Department emails on the clintonemail.com system. *See id.* at 143:11 – 143:15. Nor does Ms. Abedin remember if she or anyone else asked Secretary Clinton for any instructions with respect to State Department emails on the clintonemail.com system. *Id.* at 143:16 – 143:21. Secretary Clinton’s testimony is therefore necessary to determine whether she knew her obligations of leaving State Department emails with the State Department upon her departure and what she was thinking when she left the State Department with at least 30,000 emails in which she conducted State Department business.

*Mr. Pagliano’s role was in creating and operating the clintonemail.com system.* Plaintiff anticipated that the witnesses whose depositions had been authorized by the Court would provide information about the role Mr. Pagliano played in the creation and operation of the clintonemail.com system. That information is important because Mr. Pagliano worked as an information technology specialist for Mrs. Clinton’s 2008 presidential campaign before being appointed to a noncareer technology position in the State Department’s Bureau of Information Resources Management, and he appears to have provided information technology services for Secretary Clinton and/or former President Clinton in a private capacity while employed by the State Department. Abedin Deposition at 61:6 – 63:12; 70:3 – 12; Mills Deposition at 93:14 – 94:8; 160:10 – 161:4; Kennedy Deposition at 70:13 – 73:15. In addition, as a State Department

employee Mr. Pagliano assisted the department in resolving issues affecting the ability of emails transmitted through Mrs. Clinton's email account to reach State Department officials and employees using their state.gov email accounts. *See* Exhibit 2, document D.

As the Court is aware, however, Mr. Pagliano declined to answer any questions concerning the creation and operation of the clintonemail.com system as well as any questions concerning his relationship with Secretary Clinton as it relates to the creation and operation of the system. *See generally* Pagliano Deposition. No other witness could provide meaningful testimony about how or why Mr. Pagliano was hired by the State Department or the work he may have performed on the clintonemail.com system, either for the State Department or for the secretary and/or President Clinton. As a result, Mrs. Clinton's testimony is necessary to develop a full understanding of Mr. Pagliano's role in creating and operating the clintonemail.com system.

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Plaintiff recognizes the significance of asking a presumptive nominee for president to sit for a deposition. Plaintiff therefore is concurrently providing a copy of this motion to Secretary Clinton's attorney. In addition, Plaintiff proposes that it depose Secretary Clinton at a time and place most convenient to her schedule and that the deposition not exceed three hours in length.

## **II. Clarence Finney.**

As Ms. Abedin testified, Secretary Clinton's use of the clintonemail.com system to conduct official government business "was not a secret" in the Office of the Executive Secretariat or with senior officials of the State Department. *See* Abedin Deposition at 52:9 – 52:10; 174:7 – 174:10; 220:19 – 220:21. However, the evidence suggests that the office

responsible for managing Secretary Clinton's records was not aware of the clintonemail.com system even though inquiries were made about the secretary's use of a blackberry. Therefore, questions remain about how and why the office responsible for records management of Secretary Clinton's email did not know about her use of clintonemail.com system to conduct official government business.

The State Department identified Mr. Finney as the Director of Office of Correspondence and Records of the Executive Secretariat ("S/ES-CRM"), which had day-to-day responsibility for records management and research, including conducting and coordinating searches in response to FOIA requests, during Secretary Clinton's and Ms. Abedin's tenure.<sup>4</sup> See Exhibit 1 at 1-2. His responsibility included determining what searches were to be conducted within the Office of the Secretary in response to FOIA requests. See Lang Deposition at 35:19 – 36:7. In addition, State Department identified Mr. Finney as the head of the office responsible for inventorying or other accounting of Secretary Clinton's and Ms. Abedin's emails. See Exhibit 1 at 3-4. Mr. Finney therefore has personal knowledge about how Secretary Clinton's records were managed and how FOIA requests for Secretary Clinton's records were processed while she was secretary.<sup>5</sup>

In addition, most of the testimony provided by Karin Lang, the State Department's 30(b)(6) designee, came from Mr. Finney. Not only did Ms. Lang testify that she spoke with Mr.

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<sup>4</sup> When asked whether the Office of the Executive Secretariat had its own FOIA guidance or operating procedures, Ambassador Mull testified that he could not recall any specific document but that "Mr. Finney was aware of his responsibilities, based on his assurances." See Mull Deposition at 39:7 – 39:15.

<sup>5</sup> When asked about whether Secretary Clinton communicated "with the folks responsible for records in the Executive Secretariat[.]" Ms. Mills testified, "She engaged with them every day. Part of her day-to-day engagement would be with her special assistants, with the Executive Secretary himself or herself, whoever was the Exec[utive] Secretary. She was in routine communication and contact with them." See Mills Deposition at 262:7 – 262:1.

Finney for no more than three hours over the course of approximately three or four times in preparation for her testimony (*see* Lang Deposition at 66:9 – 66:18), she also testified that she called Mr. Finney during one of the breaks in her testimony to find answers to questions that arose during her deposition. *See id.* at 186:5 – 187:3. Although Plaintiff had the opportunity to learn some of what Mr. Finney knew or did not know about the clintonemail.com system, it was through the filter of Ms. Lang and limited to the scope of the 30(b)(6) deposition. This hindered Plaintiff's ability to gather all of the relevant information. For example, Ms. Lang testified that after Mr. Finney saw a photograph of Secretary Clinton using a blackberry he checked with S/ES-IRM to see if the secretary was using a state.gov email account. *See id.* at 64:6 – 65:7. When asked about specifics of Mr. Finney's conversation with S/ES-IRM, the State Department objected to the question as being outside the scope of the notice 30(b)(6) topic and instructed the witness not to answer. *See id.* In addition, Ms. Lang testified that she did not know if Mr. Finney had any additional conversations with S/ES-IRM about Secretary Clinton's use/non-use of a state.gov email account. *See id.*

Moreover, Ms. Abedin testified that she and others from the Office of the Secretary met with Mr. Finney to discuss what records Secretary Clinton and her staff could bring to the State Department at the beginning of the secretary's tenure as well as what records they could take with them at the end of her tenure. Abedin Declaration at 46:3 – 46:17; 135:18 – 141:22. Ms. Abedin also testified that she does not know whether Mr. Finney was aware that Ms. Abedin used her clintonemail.com email account to conduct official government business or that Secretary Clinton used her clintonemail.com email account to conduct official government business. *See id.* at 44:17 – 45:22; 46:18 – 46:21.

Simply put, only Mr. Finney can provide testimony as to why he did not know about Secretary Clinton's use of clintonemail.com system to conduct official government business.

### **III. John Bentel.**

Contrary to Mr. Bentel's public claims – which were the reason why Plaintiff did not initially seek to depose him – the evidence strongly suggests that Mr. Bentel has specific knowledge about Secretary Clinton's use of the clintonemail.com system to conduct official government business. It also suggests that Mr. Bentel or his staff failed to inform Mr. Finney and others within S/ES-CRM – the office responsible for maintaining the secretary's records and overseeing searches of those records in response to FOIA request – that that Secretary Clinton was conducting official government business on an unofficial email system. The evidence also suggests, as noted above, that when asked by his staff about Secretary Clinton's use of a non-state.gov email account to conduct government business, Mr. Bentel instructed them not to discuss the issue. As a result, obtaining Mr. Bentel's testimony is essential to determine what he knew, when he knew it, and why he did not share the information with the appropriate State Department employees responsible for responding to FOIA requests.

Specifically, during Secretary Clinton's tenure at the State Department, Mr. Bentel was director of S/ES-IRM, the office responsible for information technology for the Office of the Secretary. In that capacity, he oversaw employees that helped facilitate Secretary Clinton's use of the clintonemail.com system. For example, as noted above, employees within S/ES-IRM worked with the State Department's general information technology department to resolve issues affecting the ability of emails transmitted through Secretary Clinton's email account to reach State Department officials and employees using their state.gov email accounts. *See Exhibit 2,*

document D. Mr. Bentel had been made aware of the clintonemail.com server as early as March 2009, when a review of communications systems at Secretary Clinton's residence was undertaken and the server was identified as an "Unclassified Partner System." *See* Exhibit 2, document A.

In addition, the May 2016 OIG report found Mr. Bentel told employees in his office that Secretary Clinton's unofficial email system had been approved by the department and instructed the employees not to discuss the issue:

"Two staff in S/ES-IRM reported to OIG that, in late 2010, they each discussed their concerns about Secretary Clinton's use of a personal email account in separate meetings with the then-Director of S/ES-IRM. In one meeting, one staff member raised concerns that information sent and received on Secretary Clinton's account could contain Federal records that needed to be preserved in order to satisfy Federal recordkeeping requirements. According to the staff member, the Director stated that the Secretary's personal system had been reviewed and approved by Department legal staff and that the matter was not to be discussed any further. . . . According to the other S/ES-IRM staff member who raised concerns about the server, the Director stated that the mission of S/ES-IRM is to support the Secretary and instructed the staff never to speak of the Secretary's personal email system again."

*See* OIG Report at 40.

Mr. Bentel also reminded Secretary Clinton's staff about FOIA requirements. In August 30, 2011, Monica Hanley, an assistant to Secretary Clinton, emailed Mr. Bentel and asked him what Secretary Clinton's email address would be on a [State Department blackberry]." In response, Mr. Bentel stated, in part, "You should be aware that any email would go through the Department's infrastructure and [be] subject to FOIA searches." *See* Exhibit 2, document C. Mr. Bentel's reminder was forwarded to Ms. Abedin.

Finally, when Ms. Lang, the State Department's 30(b)(6) designee, reached out to Mr. Bentel to prepare for the 30(b)(6) deposition, Mr. Bentel, through counsel, declined to speak with

Ms. Lang. *See* Lang Deposition at 152:19 – 152:20. As a result, Plaintiff was unable to learn through Ms. Lang about the relevant knowledge Mr. Bentel possesses.

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WHEREFORE, Plaintiff respectfully requests that the Court authorize Plaintiff to depose Hillary Clinton, Clarence Finney, and John Bentel within four weeks.

Dated: July 6, 2016

Respectfully submitted,

/s/ Michael Bekesha  
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