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OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY  
INSPECTIONS AND EVALUATIONS DIVISION  
WASHINGTON, DC 20511

MEMORANDUM FOR THE RECORD

15 June 2015

PROJECT: (U) Special Inquiry 2015-001: Assistance to State Department Inspector General Review of Use of Personal Communications Hardware and Software by Five Secretaries of State and Their Immediate Staffs

INSPECTOR:

(U)

b3 per ODNI  
b6 per ODNI  
b7C per ODNI

PURPOSE:

(U//~~FOUO~~) Document Potential Issues Identified in Preliminary Review of the State Department FOIA Process.

(U//~~FOUO~~) The Office of the Inspector General of the Intelligence Community (IC IG) is assisting the State Department IG's office in the above referenced review; focused on the handling of potentially classified material during the State Department Freedom of Information Act (FOIA) review process. I am conducting a preliminary review of the handling of potentially classified material during the State FOIA review process being used to review the 33,000 emails provided by former Secretary Clinton from her personal email server. Thus far, I have identified four areas that may require expedited attention by State FOIA officials, in coordination with IC FOIA officials. Those areas are:

1. (U//~~FOUO~~) **Evaluation of other agencies' equities is not optimal.** State Department is currently relying on retired senior Foreign Service Officers to review for other agencies' equities in FOIA cases. For example, a review of the first set of 296 emails received from former-Secretary Clinton and released on the State Department FOIA website identified material that should have been referred to IC FOIA officials for review prior to release. **Recommend State Department FOIA Office request staff support from IC FOIA offices to assist in the identification of intelligence community equities.**

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(U//~~FOUO~~) Document Potential Issues Identified in Preliminary Review of the State Department FOIA Process.

2. (U//~~FOUO~~) **Storage and distribution of FOIA material is occurring on a SECRET level network.** State Department is using a SECRET level network (ClassNet) to store the 33,000 emails acquired from former-Secretary Clinton. State is also using ClassNet to distribute the FOIA material for review by both the intra-and-inter-agency. Material at the SECRET//NOFORN level was identified in the first set of 296 emails prior to their release. **Recommend IC FOIA officers review the emails to ensure ClassNet use is appropriate before transmitting to the State Bureaus for review.**
3. (U//~~FOUO~~) **Applying appropriate FOIA exemptions to protect classified information.** State Department FOIA personnel recommended five "B1" (Classified National Security Information) FOIA exemptions for proposed redactions in the first set of 296 emails to protect classified information. According to State FOIA personnel, during the State Department Legal Office's review, four of the B1 exemptions were removed and changed to "B5" FOIA exemptions (Privileged Communications). **Recommend State Department FOIA Office seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials.**
4. (U//~~FOUO~~) **It is unclear if the Department of Justice is reviewing the emails before FOIA release.** Former-Secretary Clinton's emails are the subject of numerous FOIA requests and multiple FOIA lawsuits. It may be prudent to integrate the Department of Justice into the FOIA process review to ensure the redactions can withstand potential legal challenges. **If not already being done, recommend the State Department FOIA Office incorporate the Department of Justice into the FOIA process to ensure the legal sufficiency review of the FOIA exemptions and redactions.**

**UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON**

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JUN 25 2015

**MEMORANDUM FOR THE INSPECTOR GENERAL**

**FROM:** M – Patrick F. Kennedy *PMK*  
**SUBJECT:** Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-04)

I am in receipt of the subject Memorandum (dated June 19, 2015) and its accompanying Memorandum and Attachment from the Inspector General of the Intelligence Community (ICIG). Responses to the four recommendations are contained in the attached.

The Department of State's FOIA processes are consistent with those of other agencies. State's FOIA personnel analyze responsive records for disclosure pursuant to the provisions of the FOIA and apply exemptions to the documents as appropriate. Department FOIA reviewers are trained in applying the exemptions, using guidance made available by the Department of Justice's Office of Information Policy. The reviewers consult with subject matter experts in Department components and with FOIA attorneys in the Department's Office of the Legal Adviser, as appropriate. In turn, the Department's attorneys consult regularly with attorneys at DOJ's Federal Programs Branch and attorneys at U.S. Attorney's Offices on legal issues that arise in the context of the FOIA and FOIA litigation. Consistent with the long-standing practice of third-agency review within the Executive branch and DOJ Policy on Referrals, Consultations, and Coordination, the Department consults with other agencies with respect to the review and disclosure of records that contain information that is of interest to another agency.

Taking the above in account, the Department finds the issues raised by the ICIG are either already addressed in current processes or are inconsistent with interagency practices. Further, the recommendations provided by the ICIG would add to the FOIA review process schedule and make it more difficult to meet the U.S. District Court order for rolling productions without meaningfully enhancing the review process.

Attachment:

As stated.

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#### Recommendation #1

The process utilized by the State Department to identify other agency equities is one with parallels throughout the United States Government.

Prior to undertaking the current effort, a senior level meeting was held with representatives of a number of agencies (including the CIA and ODNI); the process to be utilized was outlined; and no objection was entered.

The retired senior Foreign Service Officers are utilized because of their years of both FOIA experience and substantive expertise in the various regional and functional issues that are reviewed.

If there are specific examples from the "Benghazi" 296 set that are of concern, the Department would welcome further information.

#### Recommendation #2

The State Department Classified network is authorized to handle up to SECRET material, including NOFORN, and thus ClassNet is the appropriate system for the storage and distribution of these FOIA materials.

Should the Department identify an e-mail that potentially contains material that could be classified at a higher level, that material would be pulled from the database and transmitted for review via an appropriate channel.

#### Recommendation #3

Final determinations of classification decisions are made by senior personnel within the Department's FOIA office, assisted by subject matter experts in relevant bureaus and in the Office of the Legal Adviser, after referral of other agency equities have been made to the appropriate agencies and their comments received. These individuals have the experience and expertise necessary to carry out this responsibility correctly.

#### Recommendation #4

Emails with Department of Justice equities (including those of its component entities) are forwarded to the relevant DOJ entities for review. Legal sufficiency review of the FOIA exemptions and redactions are conducted by attorneys from the Office of the Legal Adviser; they consult regularly with the Department of Justice's Federal Programs Branch regarding FOIA issues and litigation, including litigation involving the former Secretary's emails. This type of process is common throughout the interagency.

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