UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC., Plaintiff, v. U.S. DEPARTMENT OF STATE, Defendant.	Case No. 14-cv-1242 (RCL)

NON-PARTY E.W. PRIESTAP'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S INTERROGATORIES TO E.W. PRIESTAP

Subject to and without waiving his objection to the propriety of any discovery of non-party E.W. Priestap or non-party the Federal Bureau of Investigation ("FBI") in this matter, Mr. Priestap, Assistant Director of the FBI's Counterintelligence Division, hereby responds to Plaintiff Judicial Watch, Inc.'s ("Judicial Watch") Interrogatories to E.W. Priestap:

OBJECTIONS TO ALL INTERROGATORIES

1. Non-party E.W. Priestap objects to all of Plaintiff's interrogatories on the ground that they are not authorized by the Federal Rules of Civil Procedure. Rule 33 of the Federal Rules of Civil Procedure, titled "Interrogatories to Parties," does not authorize the service of interrogatories on non-parties. *See Univ. of Texas at Austin v. Vratil*, 96 F.3d 1337, 1340 (10th Cir. 1996); *accord* Charles A. Wright & Arthur R. Miller, Parties Subject to Interrogatories, 8B Fed. Prac. & Proc. Civ. § 2171 (3d ed.) ("[I]nterrogatories are limited to parties to the litigation.").

2. Non-party E.W. Priestap objects to all of Plaintiff's interrogatories on the ground that any discovery of the FBI or any of its employees in this case is unduly burdensome and disproportionate to the needs of this case, a Freedom of Information Act ("FOIA") lawsuit against

the Department of State. Neither the FBI, nor Mr. Priestap is a party to this lawsuit. The FBI's investigation into the facts underlying former Secretary Clinton's use of a private email server has no bearing on any of the subjects on which the Court has ordered discovery in this matter, including the adequacy of the search conducted by the State Department in response to Plaintiff's FOIA request seeking certain talking points related to the Benghazi attacks. Plaintiff's service of discovery on the FBI in this case appears to be an attempt at an end-run around the legitimate FOIA exemptions that have been taken by the FBI in separate FOIA litigation matters against Judicial Watch. Moreover, much of the information that Judicial Watch is seeking here is already available to Judicial Watch, based on a review of publicly available information on the FBI's website, and of information already provided to Judicial Watch itself in other FOIA or Federal Records Act litigation.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. Non-party E.W. Priestap objects to Instruction 1 to the extent it seeks to require Mr. Priestap to provide information that is not in his possession, custody, or control. Mr. Priestap will limit the scope of his responses to information that is either within his personal knowledge or has been provided to him in his official capacity as the Assistant Director of the FBI's Counterintelligence Division, after a reasonable inquiry. To the extent Instruction 1 seeks to impose additional requirements on Mr. Priestap, it is an improper attempt to achieve what is effectively a Rule 30(b)(6) deposition on written questions of the FBI, which is not a party to this litigation.

2. Non-party E.W. Priestap objects to Instruction 2 to the extent it requires him, with respect to any portion of any interrogatory that he is unable to answer fully and completely, to (1) "provide all facts" in support of his inability to answer; (2) to "describe all the efforts" he

"made to locate the information needed to answer the interrogatory"; and (3) to "identify each person, if any, who is known by [him] to have such information." This Instruction constitutes multiple additional interrogatories, ones that are unduly burdensome and disproportionate to the needs of the case. They are also beyond the scope of the discovery permitted by the Court, as they have no connection to whether the State Department adequately searched for records responsive to Judicial Watch's FOIA request. Neither Rule 26 nor Rule 33 nor any Local Rule requires Mr. Priestap to compile and provide this information in response to an "Instruction" accompanying a set of interrogatories. Accordingly, he will not do so.

3. Non-party E.W. Priestap objects to Instruction 3 to the extent it requires him, with respect to each interrogatory, to "state whether the information furnished in the answer is within [his] personal knowledge and, if not, identify each person who has personal knowledge of the information furnished in the answer." This Instruction constitutes an additional interrogatory, one that is unduly burdensome and disproportionate to the needs of the case. It is also beyond the scope of the discovery ordered by the Court to which Mr. Priestap is obligated to respond, as it has no connection to whether the State Department adequately searched for records responsive to Judicial Watch's FOIA request. Neither Rule 26 nor Rule 33 nor any Local Rule requires Mr. Priestap to compile and provide this information in response to an "Instruction" accompanying a set of interrogatories. Accordingly, he will not do so.

INTERROGATORY 1:

Identify the "representatives" of Secretary Clinton, the "former members of her staff," and the "government agencies" from which email repositories were obtained, as referenced in paragraph 4 of your Declaration.

Response: Mr. Priestap objects to this interrogatory because it is beyond the scope of the discovery ordered by the Court; in particular, it is irrelevant to the question of whether the State Department conducted an adequate search in response to the FOIA request that Judicial Watch submitted to the State Department regarding certain talking points provided by the State Department to Susan Rice about the Benghazi attacks.

Subject to and without waiving these objections, Mr. Priestap identifies the following "representatives" of Secretary Clinton, "former members of her staff," and "government agencies" from which email repositories were obtained, as referenced in Paragraph 4 of the Amended Supplemental Declaration of E.W. Priestap, available at ECF No. 52-1 in *Judicial Watch, Inc. v. Tillerson*, D.D.C. Case No. 1:15-cv-00785. After a reasonably diligent inquiry, Mr. Priestap believes this list to be fully responsive to Interrogatory 1, but it is not necessarily an exhaustive list of all sources of email repositories obtained by the FBI as part of its investigation.

- Bryan Pagliano
- Cheryl Mills
- Executive Office of the President
- Heather Samuelson
- Jacob Sullivan
- Justin Cooper
- United States Department of State
- United States Secret Service
- Williams & Connolly LLP

INTERROGATORY 2:

Identify the "individuals who had the most frequent apparently work-related communications with Secretary Clinton" that the FBI attempted to interview, as referenced in paragraph 4 of your Declaration.

Response: Mr. Priestap objects to this interrogatory because it is beyond the scope of the discovery ordered by the Court; in particular, it is irrelevant to the question of whether the State Department conducted an adequate search in response to the FOIA request that Judicial Watch submitted to the State Department regarding certain talking points provided by the State Department to Susan Rice about the Benghazi attacks.

Mr. Priestap further objects to this interrogatory because it is vague, overly broad, unduly burdensome, and disproportionate to the needs of this case, to the extent it seeks identification of an amorphous set of the individuals who communicated "most frequent[ly]" with Secretary Clinton about "apparently work-related" subjects, whom the FBI "attempted" to interview. The FBI estimates that three individuals, collectively, accounted for more than two thirds of all emails sent directly to Secretary Clinton during her tenure as Secretary of State. Accordingly, Mr. Priestap will construe this interrogatory as seeking identification of the three individuals who had the most frequent work-related communications with Secretary Clinton who the FBI attempted to interview—that is, those three individuals who collectively accounted for more than two thirds of all emails sent directly to Secretary Clinton during her tenure as Secretary of State

Subject to and without waiving these objections, Mr. Priestap identifies these three individuals (in alphabetical order by last name) as Huma Abedin, Cheryl Mills, and Jacob Sullivan.

INTERROGATORY 3:

Of the individuals identified in Interrogatory No. 2, identify those that the FBI interviewed.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatory 2, all of which apply equally to Interrogatory 3.

Subject to and without waiving these objections, Mr. Priestap states that the FBI interviewed all of the individuals identified in the above response to Interrogatory 2 (Huma Abedin, Cheryl Mills, and Jacob Sullivan).

INTERROGATORY 4:

Of the individuals identified in Interrogatory No. 3, identify those from whom the FBI requested records.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatory 2, all of which apply equally to Interrogatory 4.

Mr. Priestap further objects to the phrase "requested records" as vague, as the FBI has a wide variety of law-enforcement tools available to it to obtain records from those who may have information that is potentially of interest to a criminal investigation (*e.g.*, voluntary requests directly to the custodian of the records; voluntary requests to other individuals or entities or service providers who may also be in possession of those same records; subpoenas issued with the recipient's understanding and cooperation; subpoenas issued over the recipient's objection; other forms of compulsory process; and so on). Some of these law-enforcement tools may resemble a "request" for records "from" an individual in some ways, but not in others.

Accordingly, Mr. Priestap will construe Interrogatory 4 as seeking, of the individuals identified in Interrogatory 3, those whose records the FBI obtained.

Subject to and without waiving these objections, Mr. Priestap states that the FBI obtained records from all of the individuals identified in the above response to Interrogatory 3 (Huma Abedin, Cheryl Mills, and Jacob Sullivan).[1]

INTERROGATORY 5:

Of the individuals identified in Interrogatory No. 4, identify those that provided records to the FBI and the number of records provided.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatories 2-4, all of which apply equally to Interrogatory 5.

Mr. Priestap further objects to Plaintiff's characterization of this interrogatory as one interrogatory, when in fact it contains two "discrete subparts." Fed. R. Civ. P. 33(a)(1). Going forward, Mr. Priestap will consider this interrogatory to count as two interrogatories for purposes of the presumptive limit on the number of interrogatories set forth in Federal Rule of Civil Procedure 33(a)(1).

Mr. Priestap further objects to the phrase "provided records" as vague, as the FBI has a wide variety of law-enforcement tools available to it to obtain records from those who may have information of interest to a criminal investigation (*e.g.*, voluntary requests directly to the custodian of the records; voluntary requests to other individuals or entities or service providers who may also be in possession of those same records; subpoenas issued with the recipient's understanding and cooperation; subpoenas issued over the recipient's objection; other forms of compulsory process;

[1] Plaintiff repeatedly uses the word "records" in its interrogatories, so that word also appears in Mr. Priestap's responses. To be clear, any use of the words "record" or "records" in these Responses and Objections is not intended to reflect any conclusion by the FBI with respect to whether any particular document or documents qualified as "federal records" under the Federal Records Act; "agency records" under FOIA; or as "records," however modified, for purposes of any other statute.

and so on). Some of these law-enforcement tools may resemble a situation in which the FBI was "provided records" by an individual in some ways, but not in others.

Accordingly, Mr. Priestap will construe Interrogatory 5 as seeking, of the individuals identified in Interrogatory 4, those whose records the FBI obtained, regardless of the manner in which the FBI obtained them.

Mr. Priestap further objects to this interrogatory on the ground that Judicial Watch's request for the "number of records provided" with respect to each referenced individual is unduly burdensome and disproportionate to the needs of this case, given the massive burden that it would impose upon the FBI, a non-party, were FBI to attempt to answer that portion of the interrogatory in an accurate manner, and the minimal (if any) value that such numbers would offer in resolving the question of whether the State Department conducted an adequate search under FOIA for certain talking points related to the Benghazi attacks.

In particular, the system that the FBI used to house and forensically analyze the data that the FBI obtained from the various devices, productions, and email repositories it collected as part of its criminal investigation of the Clinton email server was set up on standalone computers in a Sensitive Compartmented Information Facility ("SCIF") that was used by the investigative team during the investigation. Mr. Priestap understands that, for operational reasons, that SCIF has since been repurposed to other operational uses. The underlying data in the system remains preserved at an off-site location with minimal current access; to reconstruct a setup at a location for subject-matter experts to analyze the archived data (which would be necessary to provide the numbers Judicial Watch is seeking) would require significant burden and expense and likely take at least several months to accomplish. Moreover, the FBI would have to remove a variety of subject-matter experts from their current operational duties—including Special Agents and

intelligence analysts—all of whom have since moved on to other assignments (and in some instances, other geographical duty stations). Once that team was reassembled, those subject-matter experts would have to re-analyze substantial amounts of information from a closed investigative file to calculate the particular numbers that Plaintiff is seeking. The precise numbers that Plaintiff is seeking were never specifically quantified during the investigation (nor as part of preparing the referenced declaration).

Assuming the FBI diverted the significant technological and human resources necessary to accomplish that task and calculate the numbers in question, even then, the numbers reported would be largely meaningless. During the time that the FBI's investigation was active, the FBI made substantial efforts to forensically recover as many potentially relevant emails as possible. But much of the information recovered by the FBI was in the form of fragmentary data that was forensically reconstructed to the best of the FBI's ability, rather than being collected in the form of full, discrete, or complete "emails" that could be counted one-by-one, or easily de-duplicated across the larger set of emails that the FBI had collected as of any particular date. Some of the information collected by the FBI was a mix of both "logical content" (*i.e.*, actual emails, stored via traditional electronic methods) and "unallocated content" (*i.e.*, raw data from the "slack space" of a computer server that may be forensically retrievable, at least in part, after deploying substantial effort, technical expertise, and sensitive law-enforcement techniques and procedures, but that does not lend itself to useful counts of total "emails"). The FBI attempted to recover as many emails and as much information as possible, but the necessary imprecision in these forensic recovery and de-duplication methods makes it extremely difficult, if not impossible, to come up with precise, accurate numbers that would be at all meaningful in this context (even accepting, counterfactually, that precise numbers of this sort were relevant to the question of whether the State Department

conducted an adequate search under FOIA for a discrete set of talking points provided to Susan Rice regarding the Benghazi attacks). In sum, Mr. Priestap has no personal knowledge of the numbers requested by Judicial Watch, and could not obtain them without the FBI (a non-party) undertaking extremely burdensome steps that are disproportionate to the needs of this case.

Subject to and without waiving these objections, Mr. Priestap states that the FBI obtained records from all of the individuals identified in the above response to Interrogatory 4 (Huma Abedin, Cheryl Mills, and Jacob Sullivan).

INTERROGATORY 6:

Of the records provided to the FBI by individuals identified in Interrogatory No. 4, how many were not "copies already collected." See your Declaration at paragraph 4.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatories 2-5, all of which apply equally to Interrogatory 6 (except that this Interrogatory does not contain multiple discrete subparts, unlike Interrogatory 5).

Mr. Priestap further objects to Interrogatory 6 because it is beyond the scope of the discovery ordered by the Court; in particular, it is irrelevant to the question of whether the State Department conducted an adequate search in response to the FOIA request that Judicial Watch submitted to the State Department regarding certain talking points provided by the State Department to Susan Rice about the Benghazi attacks. Whether a small number or a large number of the documents obtained by the FBI from the individuals in question turned out to be duplicates (or "copies already collected") has no bearing on whether the State Department conducted an adequate search in the above-captioned FOIA case. What matters is that the FBI ultimately turned over all emails to the State Department that it had collected as part of its investigation that were apparently work-related (other than those that the FBI obtained from the State Department itself),

for a determination by the State Department as to whether any of the emails in question were in fact unique federal records.

Mr. Priestap further objects to this interrogatory on the ground that Judicial Watch's request for the number of records that were not "copies already collected," with respect to each referenced individual, is unduly burdensome and disproportionate to the needs of this case, given the massive burden that it would impose upon the FBI, a non-party, were FBI to attempt to answer that portion of the interrogatory in a fulsome and accurate manner, and the minimal (if any) value that such numbers would offer in resolving the question of whether the State Department conducted an adequate search under FOIA for certain talking points related to the Benghazi attacks. For further explanation of the burden involved, Mr. Priestap incorporates by reference the above responses and objections to Interrogatory 5.

Subject to and without waiving these objections, Mr. Priestap refers Judicial Watch to Paragraph 4 of the referenced declaration, which states that "most of" these records were "copies already collected."

INTERROGATORY 7:

Identify whether any individuals identified in Interrogatory No. 4 refused or otherwise failed to provide records to the FBI and explain what steps the FBI took to obtain the requested records from said individuals.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatories 2-5, all of which apply equally to Interrogatory 7.

Mr. Priestap further objects to Plaintiff's characterization of this interrogatory as one interrogatory, when in fact it contains two "discrete subparts." Fed. R. Civ. P. 33(a)(1). Going forward, Mr. Priestap will consider this interrogatory to count as two interrogatories for purposes

of the presumptive limit on the number of interrogatories set forth in Federal Rule of Civil Procedure 33(a)(1).

Subject to and without waiving these objections, Mr. Priestap states that none of the individuals identified in the above response to Interrogatory 4 refused or otherwise failed to provide records to the FBI.

INTERROGATORY 8:

Describe the nature of the interviews conducted by the FBI of "individuals who had the most frequent apparently work-related communications with Secretary Clinton," referenced in paragraph 4 of your Declaration. Specially, explain whether the interviews were conducted in person and whether the FBI made requests or whether legal process, such as grand jury subpoenas, was used to obtain records from such individuals.

Response: Non-party E.W. Priestap incorporates by reference his objections to Interrogatories 2-5, all of which apply equally to Interrogatory 7.

Mr. Priestap further objects to Interrogatory 8 because it is beyond the scope of the discovery ordered by the Court; in particular, it is irrelevant to the question of whether the State Department conducted an adequate search in response to the FOIA request that Judicial Watch submitted to the State Department regarding certain talking points provided by the State Department to Susan Rice about the Benghazi attacks. The nature of the FBI's investigative interviews, or the particular methods by which the FBI obtained records from certain individuals (as long as FBI did, in fact, obtain the records that it sought), have no bearing on whether the State Department conducted an adequate search in the above-captioned FOIA case. What matters is that the FBI ultimately turned over all emails to the State Department that it had collected as part of its investigation that were apparently work-related (other than those that the FBI obtained from the

State Department itself), for a determination by the State Department as to whether any of the emails in question were in fact unique federal records.

Mr. Priestap further objects to Interrogatory 8 because the second sentence of Interrogatory 8 is vague, confusing, and grammatically incorrect, such that it is difficult to understand what information Judicial Watch is seeking.

Mr. Priestap further objects to Interrogatory 8 to the extent it seeks disclosure of grand jury information that is protected from public disclosure under Federal Rule of Criminal Procedure 6(e).

Mr. Priestap further objects to Plaintiff's characterization of this interrogatory as one interrogatory, when in fact it contains three "discrete subparts." Fed. R. Civ. P. 33(a)(1). Going forward, Mr. Priestap will consider this interrogatory to count as three interrogatories for purposes of the presumptive limit on the number of interrogatories set forth in Federal Rule of Civil Procedure 33(a)(1).

Subject to and without waiving these objections, Mr. Priestap states that the FBI conducted voluntary, in-person investigative interviews with the referenced individuals. With respect to Judicial Watch's separate inquiry regarding the process by which the FBI obtained records from such individuals, Mr. Priestap incorporates by reference the above responses to Interrogatories 4, 5, and 7.

INTERROGATORY 9:

Secretary Clinton has stated that it was her expectation that all of her work-related and potentially work-related e-mail then in her custody would be provided to the State Department in response to the State Department's late 2014 request. Describe with specificity (i) the FBI's source of information on the nature of the search done by Secretary Clinton and/or her representatives for

work-related communications, (ii) your understanding of the nature of the search, such as keywords or other methods, and (iii) any conclusions the FBI reached as to the adequacy of the search.

Response: Non-party E.W. Priestap objects to Interrogatory 9 as vague, to the extent (1) the second sentence of Interrogatory 9 is vague, confusing, and grammatically incorrect, such that it is difficult to understand what information Judicial Watch is seeking; and (2) to the extent it relies upon amorphous concepts such as the FBI's (purportedly singular) "source" of information about the "nature" of the referenced search; Mr. Priestap's "understanding" of the "nature" of that search; a reference to undefined "other methods" of searching; and a reference to the "adequacy" of the search in question, a word that is typically used in the FOIA context as a legal term of art, rather than in connection with an FBI investigation.

Mr. Priestap further objects to Plaintiff's characterization of this interrogatory as one interrogatory, when in fact it contains three "discrete subparts." Fed. R. Civ. P. 33(a)(1). Going forward, Mr. Priestap will consider this interrogatory to count as three interrogatories for purposes of the presumptive limit on the number of interrogatories set forth in Federal Rule of Civil Procedure 33(a)(1).

Subject to and without waiving these objections, in response to portions (i) and (ii) of Interrogatory 9, Mr. Priestap states that the sources of the FBI's information about the collection, culling, and review of former Secretary Clinton's e-mails came primarily from the following individuals; and the FBI's understanding of that process is documented in the listed FD-302 interview summaries, which have been made public by the FBI and are all available (in partially redacted form) on the FBI's website:[2]

[2] *Available at* https://vault.fbi.gov/hillary-r.-clinton.

- The FD-302 summarizing an FBI interview of former Secretary of State Hillary Rodham Clinton describes her direction to her legal team to assist in responding to a request from the Department of State to address gaps in their system of records. *See* HRC 48–58.

- The FD-302s summarizing the FBI's interviews with Cheryl Mills and Heather Samuelson describe the process used to collect, cull, and review the e-mails referenced in Interrogatory 9. *See* HRC 157–161 (Mills); HRC 203–208 (Samuelson).

- Other FD-302s describe certain technical assistance provided to Ms. Mills, upon her request, by an individual whose name has been redacted under FOIA, related to performing an archive search of Secretary Clinton's e-mails from her tenure as Secretary of State. *See* HRC 66–71; HRC 72–78; HRC 79–85.

- The FD-302 summarizing an FBI interview of Bryan Pagliano describes a conversation with Cheryl Mills and Justin Cooper that was apparently tied to the efforts they had undertaken to locate former Secretary Clinton's e-mail archives. *See* HRC 213–220.

- Another FD-302, summarizing an interview of an individual whose name has been redacted under FOIA, includes a review of several e-mails related to this subject, and the interviewee's responses to questions seeking additional context about those emails. *See* HRC 193–196.

Finally, subject to and without waiving the above-stated objections, in response to portion (iii) of Interrogatory 9, Mr. Priestap states that the FBI reached no "conclusions" with respect to the "adequacy" of the search referenced in Interrogatory 9.

INTERROGATORY 10:

Identify the number of "email files deemed to be within the scope of the warrant" and reviewed by the FBI, as referenced in the attached FBI memorandum (Exhibit B), at Bates No. HRC-13306.

Response: Non-party E.W. Priestap objects to Interrogatory 10 because it is beyond the scope of the discovery ordered by the Court; in particular, it is irrelevant to the question of whether the State Department conducted an adequate search in response to the FOIA request that Judicial Watch submitted to the State Department regarding certain talking points provided by the State Department to Susan Rice about the Benghazi attacks. The precise number of emails that the FBI deemed to be within the scope of the particular warrant referenced in Interrogatory 10 has no bearing on whether the State Department conducted an adequate search in the above-captioned FOIA case. What matters is that the FBI ultimately turned over all emails to the State Department that it had collected as part of its investigation that were apparently work-related (other than those that the FBI obtained from the State Department itself), for a determination by the State Department as to whether any of the emails in question were in fact unique federal records.

Subject to and without waiving these objections, Mr. Priestap states that 48,982 email items were deemed to be within the scope of the referenced warrant and reviewed by the FBI, as reported in the unredacted version of the memorandum referenced in Interrogatory 10. That number, however, should not be directly compared to other publicly available data, as the methodology used by the FBI to recover, process, and de-duplicate emails (as discussed in the above response to Interrogatory 5) may result in numbers that do not perfectly align with other publicly available data.

Dated: March 22, 2019

Respectfully submitted,

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VERIFICATION

I, E.W. Priestap, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the interrogatory answers contained in the above Responses and Objections to Plaintiff's Interrogatories to E.W. Priestap are true and correct to the best of my knowledge, upon information and belief, and based upon information provided to me in my official capacity as the Assistant Director of the FBI's Counterintelligence Division.

Date: March 20, 2019.

E.W. Priestap
Assistant Director, Counterintelligence Division
Federal Bureau of Investigation

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2019, I served the Responses and Objections to Plaintiff's Interrogatories to E.W. Priestap by electronic mail on the following:

JUDICIAL WATCH, INC.
Michael Bekesha
James Peterson
Ramona Cotca

/s/ *Stephen M. Pezzi*
STEPHEN M. PEZZI (D.C. Bar No. 995500)