

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

JUDICIAL WATCH, INC.)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
)	Civil Action No. 14-1242 (RCL)
)	
DEPARTMENT OF STATE,)	
)	
<i>Defendant.</i>)	

**PLAINTIFF’S REPLY IN SUPPORT OF
MOTION FOR A STATUS CONFERENCE**

Judicial Watch, Inc. (“Judicial Watch”), by counsel, respectfully submits this reply in support of its Motion for a Status Conference. The basis for Judicial Watch’s motion for a status conference is that the State Department is conducting a limited, extremely inadequate search and withholding material information in bad faith, not that the State Department has located a “limited number of responsive documents.” Def. Opp. to Pltf.’s Mot. for a Status Conference (“Def. Opp.”) at n. 1.

The State Department has yet to demonstrate how it is satisfying its obligations under FOIA in light of recent revelations that Secretary Clinton’s emails were not being properly managed, retained and produced. This also applies to emails received or sent by other officials or employees within the Secretary’s office to conduct government business who used non-“state.gov” email addresses. To determine the adequacy of the State Department’s search, both Judicial Watch and the Court should be informed by the Department directly of the details surrounding the retention of agency emails within the Office of the Secretary and the extent of the Department’s ability to search, request and retrieve those records. A status conference is

necessary because the State Department has been anything but upfront and transparent in this regard. Too much time has been wasted in what appears to be gamesmanship by the government.

Contrary to the Department's allegations that it voluntarily informed Judicial Watch directly, and without being prompted, about an issue with emails received or sent by Secretary Clinton and her staff, the record demonstrates otherwise. Def. Opp. at p. 4. Had Judicial Watch not challenged the State Department's search, this case would most likely have been dismissed before any public revelations were made about the unlawful arrangement relating to the State Department's handling of agency emails during Secretary Clinton's tenure at the State Department. Plf. Mot. for a Status Conference ("Plf. Mot.") ¶¶ 3-6; 8-10; 12. The State Department's argument that it did not have the emails in its custody when it completed its initial search is irrelevant. The relevant issue is that the State Department did not inform Judicial Watch that the agency's emails were apparently on Secretary Clinton's server and that the search did not include those agency records. The State Department has conducted itself in bad faith when it failed to records-manage its agency records and again when it failed to disclose such pertinent information to Judicial Watch and the Court.

Further, Judicial Watch's prior request that the State Department confirm whether its supplemental search includes the 55,000 pages went unanswered until Judicial Watch requested consent for a status conference. See Ex. 3 to Plf. Mot. (ECF No. 12-3). As of today's filing, the State Department has still not responded to Judicial Watch's request to confirm whether its supplemental search includes all non-"state.gov" email addresses used by other officials or employees within the Secretary's office for government business. *Id.* Based on information

available through public accounts, the supplemental search should also include these other email addresses, as well as the remaining agency emails of Secretary Clinton not turned over. To the extent that Secretary Clinton used her non-“state.gov” email address to communicate with State Department employees outside her office who used “state.gov” email addresses, the State Department would also have to conduct agency wide searches to respond properly to Judicial Watch’s FOIA request.

The State Department relies on the Court’s ruling in *Kissinger v. Reporters Comm. For Freedom of the Press* to argue that matters raised in Judicial Watch’s motion are outside the scope of FOIA, but does not address the relevant part of the Court’s opinion to this case. 445 U.S. 136 (1980). “We need not decide whether this standard might be displaced in the event that it was shown that an agency official purposefully routed a document out of agency possession in order to circumvent a FOIA request.” *Id.*, at n. 9. In such cases, this Court has already found that discovery was appropriate where it was “designed to explore the extent to which [the Department of Commerce (“DOC”)]...illegally destroyed and discarded responsive information, and possible methods for recovering whatever responsive information still exists outside of the DOC’s possession.” *Judicial Watch, Inc. v. U.S. Dept. of Commerce*, 34 F. Supp. 2d 18, 41 (D.D.C. 1998); *see, e.g., Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 62 (D.D.C. 2003) (noting that earlier in litigation the court had held the EPA in contempt and ordered it to pay plaintiff’s costs and fees “caused by EPA’s contumacious conduct,” namely, destroying “potentially responsive material contained on hard drives and email backup tapes”). Secretary Clinton was the head of the agency and the State Department cannot claim it was unaware of the State Department’s failure to records-manage agency emails from the Office of

the Secretary. In fact, the “Statement from the Office of Former Secretary Clinton” states that “[h]er usage [of non-“state.gov” email for State Department business] was widely known to the over 100 Department and U.S. government colleagues she emailed.”¹

Time is of the essence in this case. The statement by former Secretary Clinton during a press conference that she did not preserve approximately 30,000 emails she sent or received through her non-“state.gov” email address she used exclusively to conduct government business is a matter of public record – not “conjecture.” Plf. Mot. ¶13; Def. Opp. at p. 4. Only last week, the State Department publically disclosed that it was unable to automatically archive the emails of most of its senior officials until last month.² This is also a matter of public record – not conjecture. The State Department has still not informed the Court or Judicial Watch whether it has undertaken any efforts to retrieve agency emails from non-“state.gov” email addresses used by other officials or employees within the Office of the Secretary during the relevant time period or from other employees within the agency. The State Department needs to request these agency records immediately in light of the Department’s history of poor records-management and preservation of agency records.

WHEREFORE, Judicial Watch, Inc. respectfully requests a status conference as soon as possible for the Court and the parties to address the issues raised by Plaintiff’s motion and reply in support thereof, and for any other relief the Court deems just and proper.

¹ Hillary Clinton, *Statement from the Office of Former Secretary Clinton* (Mar. 10, 2015), available at <http://insider.foxnews.com/2015/03/10/read-hillary-clintons-office-releases-qa-email-controversy>.

² http://www.washingtonpost.com/world/national-security/state-dept-most-official-email-not-auto-archived-until-feb/2015/03/13/71e689f0-c9e6-11e4-bea5-b893e7ac3fb3_story.html

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Respectfully submitted,

JUDICIAL WATCH, INC.

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