

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 MOTION TO ALLOW TIME  
FOR LIMITED DISCOVERY PURSUANT TO RULE 56(d)**

Plaintiff Judicial Watch, Inc., by counsel, pursuant to Rule 56(d) respectfully requests that the Court deny, or, in the alternative, defer ruling on Defendant's premature motion for summary judgment and permit time for limited discovery of facts Plaintiff needs to substantively oppose Defendant's motion for summary judgment. Plaintiff respectfully submits the accompanying Rule 56(d) Declaration in support of Plaintiff's motion. Defendant has represented, through counsel, that it opposes Plaintiff's request for the limited discovery.<sup>1</sup> As grounds therefor, Plaintiff submits its memorandum of law below.

**MEMORANDUM OF LAW**

**I. Introduction**

This case involves an unprecedented removal of an entire system of records from an agency by the agency head. Only through some limited discovery can Plaintiff ascertain necessary facts to determine what sources are available for a reasonable search of the records Plaintiff requested. Defendant's motion for summary judgment is premature and should be

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<sup>1</sup> Pursuant to LCvR 7(f), Plaintiff requests an oral hearing on Plaintiff's Rule 56(d) Motion.

denied.

## **II. Factual Background**

### *(a) Plaintiff's FOIA request and Defendant's initial search.*

On May 13, 2014, Plaintiff submitted a FOIA request to Defendant's Office of the Secretary seeking access to:

- a. Copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11, 2012 attack on the U.S. consulate in Benghazi, Libya.
- b. Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

(hereinafter also referred to as the "Benghazi talking points"). *See* Compl. at ¶ 5. Relevant records requested by Plaintiff include, but are not limited to, emails sent and/or received by former State Department officials Hillary Rodham Clinton, Cheryl Mills (chief of staff), Huma Abedin (deputy chief of staff), Jacob Sullivan (deputy chief of staff) and Philippe Reines (senior advisor).

In response to the filing of this lawsuit, Defendant produced four responsive records with redactions on November 12, 2014. *See* 7/7/15 Decl. of John F. Hackett at ¶16 ("Hackett Decl.") (ECF No. 19-2); *see also* Pltf. Mot. for Status Conf. at ¶ 5 (ECF No. 12). Defendant did not disclose that it never searched Mrs. Clinton's emails as part of its response to Plaintiff's FOIA request. *Id.* Nine months since Defendant first claimed its search was complete, it is still unclear where potentially responsive records are reasonably expected to reside.

On June 30, 2015, when Defendant's motion for summary judgment was due, Defendant requested a one-week extension to review federal records it received on or about June 26, 2015

from Ms. Mills and Mr. Sullivan (chief of staff and deputy chief of staff). *See* 6/30/15 Def. Notice at ¶¶ 2-3 (ECF No. 17). At that time, Defendant did not disclose that additional productions were expected in only a matter of weeks. *Id.*; *See* Ex. 2 (“Mills Ltrs.”) and Ex. 3 (Abedin Ltrs.”), attached to Declaration of Counsel In Support of Plaintiff’s Motion to Permit Discovery Pursuant to Rule 56(d) (“Rule 56(d) Decl.”) at ¶¶ 7-8. Defendant appears to have received additional records from Ms. Abedin on at least July 9, 2015 and August 6, 2015 and her final production is expected by August 28, 2015. *See* Abedin Ltrs. (Ex. 3). Ms. Mills purportedly returned her final production on or about August 10, 2015.<sup>2</sup> *See* Mills Ltrs. (Ex. 2).

(b) *Reports about Mrs. Clinton’s government emails and server.*

On March 2, 2015, the New York Times first reported that Mrs. Clinton used at least one “clintonemail.com” email account exclusively for government business while she was secretary of state.<sup>3</sup> It was also then reported that all “clintonemail.com” accounts were routed through a separate email server installed in Mrs. Clinton’s house in Chappaqua, New York. Ms. Abedin also used an email account on the “clintonemail.com” email server for government business. 8/10/15 Status Rpt., *Judicial Watch v. Dep’t of State*, Case No. 13-1363 (D.D.C.) (ECF No. 22). Plaintiff asked Defendant whether Mr. Sullivan and Mr. Reines used email accounts on the “clintonemail.com” server but Defendant refused to provide the information.

On November 12, 2014, Defendant requested that Mrs. Clinton provide any federal

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<sup>2</sup> Philippe Reines, another senior advisor to Mrs. Clinton, was also involved in the Benghazi talking points. Def. SJM at p. 14. He appears on an email exchange with Mr. Sullivan, Ms. Mills and Ms. Abedin that Defendant discovered in the June 26, 2015 production either from Ms. Mills, or Mr. Sullivan, or both about the Benghazi talking points. *Id.* It appears that Mr. Reines produced twenty boxes of potential federal records to Defendant on July 28, 2015. *See* Josh Gerstein, *Gawker Presses on Philippe Reines Emails.*, Politico (August 4, 2015). Plaintiff does not have any facts available to determine whether Mr. Reines’ allegedly returned a “complete” production of potential federal records to Defendant.

<sup>3</sup> *See* Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, the N.Y. Times (March. 2, 2015).

records she may have, such as emails sent or received on a personal email account while serving as secretary of state, which may not otherwise have been preserved in the Defendant's recordkeeping system. In response to the request, Mrs. Clinton allegedly instructed her attorneys to review emails on her "clintonemail.com" email account and determine which emails are federal records and which are personal. As a result, of the 62,320 emails stored on her "clintonemail.com" account, "30,490 of those emails were provided to [Defendant on December 5, 2015] and 31,830 were [deemed] private, personal records."<sup>4</sup> Mrs. Clinton "chose not to keep her private, personal emails" she or someone else believed were not federal records. *Id.* Mrs. Clinton does not address whether she used any other email accounts for government business or even whether government related emails remained on the BlackBerry and/or iPad she admitted to have used for government business. *Id.*

While Mrs. Clinton's counsel, David Kendall of Williams & Connolly LLP, has asserted that "there are no hdr22@clintonemail.com" emails from Secretary Clinton's tenure as secretary of state on the server for any review, he also does not address whether Mrs. Clinton used other email accounts for government business and whether the server contained Mrs. Clinton's emails from any other email account she may have used for government business.<sup>5</sup> Mr. Kendall's comments also do not address any copies, clones, or duplication of the server's hard drive or any backup tapes or backup servers.<sup>6</sup>

Since Defendant filed its motion for summary judgment, news reports indicate that the

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<sup>4</sup> See Statement from the Office of Former Secretary Clinton (Mach 2015), available at <http://www.factcheck.org/UploadedFiles/2015/03/HRC-staff-QA-pdf.pdf>.

<sup>5</sup> See Michael S. Schmidt, "No Copies of Clinton Emails on Server, Lawyer Says," *New York Times* (March 27, 2015).

<sup>6</sup> *Id.*



“clintonemail.com” server was serviced and maintained by an IT Specialist from the State Department. Bryan Pagliano, the former IT director for Mrs. Clinton’s presidential campaign in 2008, was hired by Defendant in May 2009 as an “IT Specialist.”<sup>7</sup> As an employee of the Defendant, Pagliano “continued to act as the lead specialist responsible for [the server].”<sup>8</sup> He is reported to have been called to fix problems with the server, including after Hurricane Sandy in October 2012.<sup>9</sup>

**III. The Court Should Grant Plaintiff’s Rule 56(d) Motion and Deny Defendant’s Premature Motion for Summary Judgment in Order to Allow Adequate Time for Discovery**

*(a) Defendant’s motion for summary judgment is premature.*

Defendant moved for summary judgment, yet on its face, it is clear that the motion is premature. Hackett Decl. at ¶ 19 (ECF No. 19-2). Defendant knew its production of potentially responsive records was incomplete, that scheduled productions were imminent, and that its request for extension of time would provide for only a partial review of potentially responsive records.<sup>10</sup> See 6/30/15 Def. Notice at ¶¶ 3-4 (ECF No. 17). Defendant also knew that at least some of these records were being reviewed and/or returned in response to the Plaintiff’s FOIA

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<sup>7</sup> Carol D. Leonning, Rosalind S. Helderman, Tom Hamburger, “FBI Looks into Security of Clinton’s Private E-mail Setup,” *Washington Post* (Aug. 4, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Contrary to Defendant’s assertion, Defendant’s motion for summary judgement did not “provide[] the latest available information concerning the letters sent to [Mills, Abedin and Sullivan]” about their productions of federal records to Defendant. See Def. SJM n. 6; Mills Ltrs. (Ex. 2); and Abedin Ltrs. (Ex. 3). On or about June 25, 2015, Defendant knew that Ms. Mills’ attorneys “hope[d] to provide additional documents in Ms. Mills’ possession from the broader time period on a rolling basis next month.” See Mills Ltr. (June 25, 2015) (Ex. 2). On or about June 29, 2015, Defendant knew that Ms. Abedin’s attorneys were “working diligently to respond” and that they “[were] on track to provide...documents...within the next several weeks and hope to work closely with the Department on a timetable for providing any other potential federal records in Ms. Abedin’s possession.” See Abedin Ltr. (June 29, 2015) (Ex. 3).

request in this lawsuit.<sup>11</sup>

For a government agency to obtain summary judgment under FOIA on the adequacy of the search, “the agency must demonstrate beyond material doubt that its search was ‘reasonably calculated to uncover *all* relevant documents.’” *See Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (emphasis added), (*quoting Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). Defendant had knowledge of these potentially responsive federal records, was in the process of their productions, yet moved for summary judgment before this was complete. At a minimum, Defendant should be ordered to complete its review of the records from Ms. Mills, Ms. Abedin, Mr. Sullivan and Mr. Reines before Plaintiff can oppose summary judgment.<sup>12</sup>

(b) *Limited discovery is necessary and appropriate.*

Even if the review of the records discussed above was complete, which is not, Plaintiff needs limited discovery about Defendant’s recordkeeping systems during Mrs. Clinton’s tenure before the Court and Plaintiff can determine whether a reasonable search has been conducted under the facts presented here. As explained in the supporting declarations, facts about the recordkeeping system are necessary for the Court and Plaintiff to determine where potentially responsive records are reasonably expected to reside. *See* Rule 56(d) Decl.; 8/21/15 David Sun Decl. (Sun Decl.) attached thereto as Ex. 1.

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<sup>11</sup> Ms. Abedin’s attorneys note in their letter of June 29, 2015 to Under Secretary Patrick F. Kennedy that to date, they had not identified documents responsive to Plaintiff’s FOIA request in this lawsuit. If Ms. Abedin’s attorneys have made or are making determinations whether a federal record is responsive to Plaintiff’s FOIA request in this case, then such a determination by Ms. Abedin’s attorneys – as third parties – would be improper.

<sup>12</sup> As an official who likely communicated with the Secretary’s office about the Benghazi talking points, Mr. Reines’ records should be searched as well. Def. SJM at p. 14. Defendant’s position that his records are not relevant because he allegedly was assigned to a separate office is unavailing when emails from the Secretary’s office were routed outside the “state.gov” email system.

Plaintiff should not have to rely on piecemeal information provided in public news reports or other pending lawsuits to gather the facts it needs to oppose Defendant's motion. Information recently became available in an unrelated pending lawsuit before the Hon. Emmet G. Sullivan about the use of "clintonemail.com" emails and productions of federal records from Ms. Mills and Ms. Abedin. 7/31/15 Minute Order, 8/10/15 Def. Status Rpt. (ECF No. 22). *Judicial Watch v. Dep't of State* (Case No. 13-1363) (D.D.C.). While information disclosed in that case about the use of "clintonemail.com" emails and productions of federal records from Ms. Mills and Ms. Abedin is relevant to this case, Plaintiff requires the same information as it relates to Mr. Sullivan and Mr. Reines.

Rule 56(d) prevents Defendant from "railroading" Plaintiff into a premature motion for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986).<sup>13</sup> A party faced with a premature summary judgment motion is required to file an affidavit "outlin[ing] the particular facts [it] intends to discover and describe why those facts are necessary to the litigation." *Id.* (citing *Byrd v. U.S. Envtl. Prot. Agency*, 174 F.3d 239, 248 (D.C. Cir. 1999)). Plaintiff has attached such an affidavit to this motion. See Rule 56(d) Decl. As the known facts already demonstrate, this is the rare FOIA case where discovery is necessary. See *Landmark Legal Found. v. Envtl. Prot. Agency*, 959 F. Supp. 2d 175 (D.D.C.)

To date, Plaintiff is not aware of all of the email accounts Mrs. Clinton used for government business. Plaintiff is not aware of Mrs. Clinton ever identifying how she – or others, for that matter – searched for and decided which emails to provide to Defendant. As noted earlier, recent reports suggest that the server in Mrs. Clinton's house was maintained

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<sup>13</sup> Rule 56(f), which applies in *Celotex Corp.*, is the equivalent of the current Rule 56(d). This applies to several cases cited herein.

and serviced by a State Department IT Specialist.<sup>14</sup> All of these facts are necessary to determine Defendant's system of records available, whether any backups exist and where potentially responsive records reside. Rule 56(d) Decl. at ¶ 5.

As Plaintiff explains in its accompanying Rule 56(d) declaration, the limited subject matters of inquiry are:

- Information to identify officials (custodians) outside the Secretary's office who were likely to communicate to/from the Secretary's office about the subject matter of Plaintiff's FOIA request (e.g. Philippe Reines);
- Information about their use of email accounts and systems outside the "state.gov" servers, including the "clintonemail.com" server and email accounts;
- Information about what electronic and computing devices (BlackBerrys, iPhones, iPads, laptops, desktops, etc.)<sup>15</sup> were used by key officials, their locations and Defendant's ability to search for potentially responsive records;
- How emails and email servers were managed by Defendant, including, but not limited to the "clintonemail.com" server and backup server;
- How files and file servers were managed by Defendant; and/or
- How Defendant implemented system backups.

*See* Rule 56(d) Decl. at 5; Sun Decl. at ¶¶ 12-14, 26 (Ex. 1). Pointed and limited discovery of facts about these issues, as well as the productions of federal records to Defendant from Mr. Sullivan and Mr. Reines is necessary before summary judgment motions.

#### **IV. Conclusion**

For the foregoing reasons, the Court should grant Plaintiff's Rule 56(d) motion and deny, or in the alternative, defer ruling on, defendant's motion for summary judgment to allow time for

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<sup>14</sup> Leonning, Helderman, and Hamburger, *supra*.

<sup>15</sup> Mrs. Clinton recently admitted that she used a Blackberry and iPad as Secretary for her government email. *See* <https://www.hillaryclinton.com/p/briefing/factsheets/2015/07/13/email-facts/>.

limited discovery.

Dated: August 21, 2015

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca

Ramona R. Cotca, D.C. Bar No. 501159

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*Attorneys for Plaintiff*

**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,	)	
	)	
<u><i>Defendant.</i></u>	)	

**DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S  
MOTION TO PERMIT DISCOVERY PURSUANT TO RULE 56(d)**

Pursuant to Fed. R. Civ. P. 56(d), Ramona R. Cotca hereby declares as follows:

1. I am an attorney employed by Judicial Watch, Inc. and counsel for Plaintiff in the above-captioned matter. I have personal knowledge of the matters set forth below.
2. Pursuant to Rule 56(d), I submit this declaration in support of Plaintiff's motion to allow time for limited discovery and attach in support hereto the Declaration of David Sun, an expert in the fields of computer forensics and electronic discovery, as Exhibit 1. Mr. Sun's Declaration discusses the types of searches that could reasonably be done to locate the records Plaintiff requested, depending on the facts available about the email system and email accounts used by the Office of the Secretary.
3. As required by Rule 56(d), this declaration outlines the limited topics of inquiries Plaintiff seeks to address through discovery to be able to determine available sources for the records Plaintiff requested and reasonable searches Defendant should undertake in this lawsuit filed under the Freedom of Information Act (FOIA). Plaintiff needs this limited discovery before it can oppose Defendant's motion for summary judgment.
4. This lawsuit seeks access to the following information:
  - a) Copies of any updates and/or talking points given to Ambassador Rice by the

White House or any federal agency concerning, regarding, or related to the September 11, 2012 attack on the U.S. consulate in Benghazi, Libya.

b) Any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency.

The parties agree that emails sent to and/or from former Secretary of State Hillary Rodham Clinton, Jacob Sullivan, Cheryl Mills, and Huma Abedin, all former officials from the Office of the Secretary, are relevant to Plaintiff's FOIA request. Plaintiff believes that emails to and/or from Philippe Reines are also relevant to Plaintiff's FOIA request.

5. Plaintiff seeks limited discovery about the following:

- How emails and email servers were managed by the Defendant, including, but not limited to the "clintonemail.com" server and backup server;
- How files and file servers were managed by the Defendant;
- How Defendant implemented system backups;
- Information to identify officials (custodians) outside the Secretary's office who were likely to communicate to and/or from the Secretary's office about the subject matter of Plaintiff's FOIA request (e.g. Philippe Reines);
- Information about former officials use of email accounts and systems outside the "state.gov" servers, including the "clintonemail.com" server and email accounts;
- Information about what electronic and computing devices (BlackBerrys, iPhones, iPads, laptops, desktops, etc.) were used by key officials, their locations and Defendant's ability to search for potentially responsive records; and/or
- What other ad-hoc backups of data or USB devices were used for government business.

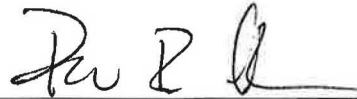
6. Defendant has been unwilling to provide this information to Plaintiff. Plaintiff cannot obtain this information from Defendant without Court-ordered discovery.

7. Attached hereto as Exhibit 2 are relevant correspondences between Defendant and Cheryl Mills and/or her attorneys about the collection of federal records. These are true copies of

correspondences posted on the Court's ECF system in *Judicial Watch v. Dep't of State*, Case No. 13-1363 (ECF Nos. 18, 20).

8. Attached hereto as Exhibit 3 are relevant correspondences between Defendant and Huma Abedin and/or her attorneys about the collection of federal records. These are true copies of correspondences posted on the Court's ECF system in *Judicial Watch v. Dep't of State*, Case No. 13-1363 (ECF Nos. Nos. 18, 20).

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on this 21st day of August, 2015.

A handwritten signature in black ink, appearing to read 'R. Cotca', written over a horizontal line.

Ramona R. Cotca



# EXHIBIT 1

(DECLARATION OF DAVID SUN)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC

*Plaintiff,*

v.

U.S. DEPARTMENT OF STATE

*Defendant.*

Civil Action No. 14-cv-1242 (RCL)

**DECLARATION OF DAVID SUN**

The undersigned, David Sun, an expert witness for Plaintiff Judicial Watch, Inc., hereby sets forth his declaration as follows:

**A. Qualifications and personal background.**

1. I, David Sun, state that I am over the age of 18 and am competent to testify to the matters herein.
2. I am the founder and president of SunBlock Systems, a consulting firm which specializes in digital forensics, electronic discovery, and technology consulting. As president, I have led and personally conducted numerous computer examinations and have been involved in electronic discovery matters.
3. I am also the president of S34A, Inc., a company that performs advanced research in computer forensics for the Department of Homeland Security and other government agencies. As the president, I am responsible for the company's overall research efforts and ensuring that they meet the technical and operational requirements of forensic practitioners in law enforcement as well as the private sector.

4. I am a Certified Information Systems Security Professional (CISSP), a Certified Computer Examiner (CCE) and an EnCase Certified Examiner (EnCE). I am also an Adjunct Professor at George Mason University and an instructor for Virginia and Massachusetts State Bar approved Continuing Legal Education courses, having taught multiple courses on computer forensics and electronic evidence. I am often invited to speak at technical conferences on advancements in the field of computer forensics. I have been awarded multiple patents for inventions in the field of computer forensics and also authored numerous technical publications in the fields of computer forensics, electromagnetics, and telecommunications. I have Bachelor's and Master's degrees in Electrical Engineering from Virginia Polytechnic Institute and State University (Virginia Tech).
5. I have been accepted as a testifying expert in Computer Forensics in multiple jurisdictions. Examples of my roles in the fields of computer forensics and electronic discovery include the following:
  - a. Managed numerous computer investigations and e-Discovery matters involving various legal issues such as United States Security and Exchange Commission (SEC) compliance, United States Environmental Protection Agency (EPA) criminal investigations, homicide, black-market drug manufacturing, intellectual property theft, identify theft, corporate malfeasance, system hacking, and wrongful termination.
  - b. Served as computer forensics and e-Discovery expert for various multi-national corporations involved in class action and anti-trust litigation.

- c. Performed information security assessments for various high profile events and systems such as the Games of the 2004 Olympiad in Athens, Greece; the United Nations 2002 Summit on Economic Development in Johannesburg, South Africa; and the United States Federal Reserve Bank in Dallas, TX.
  - d. Served as interim Chief Technology Officer (CTO) for a distressed phone company ordered into receivership by a federal judge.
6. One particular past matter which may be relevant to this matter is my investigation into the loss of public records by then sitting mayor for the City of New Orleans, C. Ray Nagin. In that matter, the City was responding to a FOIA request for emails from the Mayor. The City's IT department was unable to produce a reasonable set of records, as the emails no longer existed in the Mayor's email account. The City, therefore, retained SunBlock Systems to assist its IT department in identifying alternative locations for Mayor Nagin's emails. Our efforts entailed gaining an understanding of the City's IT systems, how they were managed and how they were used by employees. With that understanding, we were able to identify alternative search methods and locations that resulted in the recovery of thousands of additional emails.

**B. Purpose and Scope of Judicial Watch's Retention.**

7. I have been retained by Judicial Watch to review the Defendant's Motion for Summary Judgement and its supporting documents as well as various filings and declarations made in other lawsuits by or on behalf of the State Department. Specific filings are referenced in footnotes as appropriate. In reviewing this information, I have been asked to form an opinion on the thoroughness and effectiveness of the Defendant's searches and efforts to

locate records responsive to the Plaintiff's FOIA request. I form this opinion based on my professional training and experience and information available to me at this time.

**C. Lack of Information to Confirm Effectiveness of Search.**

8. In any controversial fact finding endeavor, a natural tension exists between assurances that a responding party conducted a thorough search effort, and uncertainty on the side of the requesting party. Given that the responding party is neither compensated nor motivated to be as comprehensive as possible in their search for responsive documents, the requesting party or some external entity generally needs to be provided enough detail on the search in order to form a fully informed opinion about its adequacy.
9. For example, in the realm of civil litigation and electronically stored information (e.g. emails, computer files, text messages), Rule 26(f) of the Federal Rules of Civil Procedure requires all parties in litigation to conduct a "meet and confer" in the early stages of litigation. Generally, this meet and confer is accepted to include the sharing of information regarding data custodians and locations for readily accessible electronically stored information. While such meet and confers are not always successful, by mandating that they occur a process has been created in which the requesting and responding parties must engage in a discussion. The result of this required discussion ensures requesting parties have a better understanding of the respondent's systems and the data available for searching. This affords the requesting party the opportunity to assess if the respondent conducted a reasonable search. Although the Federal Rules of Civil Procedure may not be directly applicable in the FOIA context, they demonstrate the need for collaboration between opposing parties when exchanging electronically stored information. Another court has even stated that "much of the logic behind the

increasingly well-developed case law on e-discovery searches is instructive in the FOIA search context because it educates litigants and courts about the types of searches that are or are not likely to uncover all responsive documents.”<sup>1</sup>

**D. Inadequate Search Methodology Based on Information Available.**

10. In his declaration, John F. Hackett, Director of the Office of Information Programs and Services for the U.S. Department of State, provides some details on the search methodology used. The Declaration specifies that various formal records systems within the Office of the Executive Secretariat Staff (“S/ES-S”) were searched. Specifically, documents from the “STARS”, “STePS”, “CARS” and “TS” systems were searched as well as the state.gov email accounts of Cheryl Mills, Jacob Sullivan, and Huma Abedin.<sup>2</sup> However, the state.gov email account for Secretary Clinton was omitted from the search.
11. In normal circumstances, the locations specified in Director Hackett’s declaration may be considered suitable as an individual’s work email account typically contains a significant portion of the messages available. However, in this matter, based on information and belief that Secretary Clinton and other members of S/ES-S (including Ms. Abedin, Ms. Mills and Mr. Sullivan)<sup>3,4</sup> used external email systems and/or external email addresses to conduct official State Department business, a search of the formal records systems and the state.gov email accounts for only those three individuals cannot be considered a reasonable scope to locate the information specified in the FOIA request. This is because neither the inbox or sent-item folders for their state.gov email accounts can be expected

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<sup>1</sup> *National Day Laborer Organizing Network v. U.S. Immigration and Customs Enforcement Agency*, 877 F. Supp. 2d 87, 109 (S.D.N.Y. 2012).

<sup>2</sup> Defendant’s Motion for Summary Judgement filed on July 7, 2015, Declaration of John F. Hackett, pages 3-5.

<sup>3</sup> *Judicial Watch v. U.S. Department of State*, Case Number 13-CV-1363-EGS, Supplement to Defendant’s August 7, 2015 Status Report, Declaration of Hillary Rodham Clinton.

<sup>4</sup> *Judicial Watch v. U.S. Department of State*, Case Number 13-CV-1363-EGS, Defendant’s Status Report filed on August 7, 2015, Exhibit A and Exhibit E.

to contain records of all emails sent or received by those individuals in which they conducted official State Department business. The use of a separate, external system means that an unknown number of messages for these key individuals did not originate or terminate in their state.gov email account.

12. In my opinion, based on the limited information provided by the Defendant as well as the acknowledged usage by key individuals whose email accounts were searched, the Defendant failed to apply an adequate search methodology to locate documents responsive to this FOIA request. Specifically, the omission of Secretary Clinton's state.gov account from the search, the inability of the Defendant to confidently include all contents from outside email systems used for work purposes by key individuals, and the omission of other relevant custodians from the search means that the data Director Hackett was able to search was incomplete from the onset. Therefore, additional searches to include alternative locations are both necessary and reasonable. Supplementary information is necessary to determine which additional searches would be reasonable.

**E. Additional Searches Available.**

13. The implementation of additional searches should start with some common search practices. The most fundamental practice is to establish a reasonable records custodian list- a list of individuals who may have encountered responsive records as part of their job responsibilities and duties. In general, key individuals as well as others who would have communicated with them (such as their administrative assistants, their direct reports and the administrative assistants for those direct reports) should be included in the records custodian list. While Director Hackett's declaration indicates that some members

of Secretary Clinton's staff were included, it was a small number and failed to include their assistants or direct reports who may have been included in email correspondence. In addition, Secretary Clinton was not included in the list of individuals whose accounts or systems were searched. As such, the records custodian list used by the Defendant lacked numerous relevant individuals likely to have received responsive emails.

14. Once this list of records custodians is established, all potential locations where responsive documents could have been stored should be identified. Through the normal course of operation, computer systems utilize numerous potential locations to find responsive records. Examples of such typical locations include, but are not limited to:

- a. All electronic devices and equipment used by data custodians such as computers workstations, laptops, cell phones (BlackBerrys, iPhones, etc.), iPads, USB storage devices, CD/DVD media;
- b. Servers such as email servers, file servers, email archive servers, application servers, document management systems, backup servers;
- c. Externally or cloud hosted systems and accounts;
- d. Social media accounts;
- e. All backup media for any of the above sources;
- f. Paper documents/archives/journals;
- g. Ad hoc backup storage devices. These are locations where users may store business information without the knowledge or assistance of the IT department.

Numerous filings in related cases have demonstrated that the key individuals in this matter likely used such ad hoc locations as they acknowledge still having



possession of federal records despite no longer being employed at the Department of State.<sup>5</sup>

15. The recommendation to search each of these possible locations is made based on the following:

- a. The relative ease of searching the location;
- b. The probability of finding responsive information in the location;
- c. The ability to perform the equivalent searches using easier methods at other locations.

While Director Hackett's FOIA search methodology that led him to only search the formal records systems and state.gov email accounts for three individuals may have been adequate in other FOIA requests, in this matter, since the Department's email server was apparently bypassed, alternative search methodologies and locations must be considered for the search to be reasonable and adequate.

16. Starting with the fundamental records custodian list, based on the limited information available, I am of the opinion that Director Hackett's list was incomplete. In addition to omitting any administrative assistants for the key individuals, the account of Philippe Reines (Deputy Assistant Secretary of State for Strategic Communications and Senior Communications Advisor to Secretary Clinton) was also omitted. Mr. Reines was included among the recipients of withheld document **C05831334**<sup>6</sup> indicating that he may have encountered responsive records as part of his job responsibilities and duties. It is important to note that Mr. Reines also used an external email account for business

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<sup>5</sup> Judicial Watch v. U.S. Department of State, Case Number 13-CV-1363-EGS, Defendant's Status Report filed on August 7, 2015, Exhibit A and Exhibit E.

<sup>6</sup> Defendant's Motion for Summary Judgement filed on July 7, 2015, Declaration of John F. Hackett, paragraph 30.

communications. To my knowledge, Mr. Reines has not been directed to confirm that he has produced any responsive documents in his possession. This omission further reduces the probability that Director Hackett's search covered the complete universe of documents.

17. Beyond the external email accounts used by key individuals, the Defendant can access numerous locations at which it can conduct the document search. Searching the computers, cell phones, and USB storage devices used by any of the records custodians is fairly straightforward. Searching departmental file servers, archive servers and backup media for emails moved off the email server (a common practice) is also a routine process. Lastly, most modern email systems have the ability to conduct an enterprise-wide keyword search of inboxes within the email server(s), thereby eliminating the need to search each user account individually.
18. While an enterprise-wide search of all inboxes on the email server(s) may seem daunting at first, numerous advances in email server management have made this a fairly expedient and common practice. For example, Microsoft Exchange, a very common enterprise email system used by numerous government agencies, supports numerous tools designed to perform an enterprise-wide search.<sup>7</sup> Some of these tools cost as low as \$300, depending on the number of mailboxes to search and can be installed on the email server(s) to conduct centralized searches. Other email systems, such as IBM (formerly Lotus) Notes/Domino, also have tools available which support enterprise-wide keyword searching from the email server.

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<sup>7</sup> Example tools for enterprise-wide keyword searching include Discovery Attender by Sherpa Software, PowerControls by Kroll Ontrack, and MAPILab Search for Exchange by MAPILab.

19. Microsoft included the enterprise-wide keyword search functionality since the 2010

version of the Microsoft Exchange email system allowing for its prevalent use. The free “multi-mailbox search” function allows for searching up to 2,500 mailboxes in a single search.<sup>8</sup> Searches involving more than 2,500 mailboxes can be done by performing the searches in batches of accounts. Attached in Exhibit A is a screen capture from a typical Exchange email system. It demonstrates the ability to easily perform an enterprise-wide keyword search of email messages from any user account on the server that contain a specified keyword(s).

20. In this matter, I believe that an enterprise-wide keyword search of all user accounts on the

email server is an effective and logical next step. The process would allow the reconstruction of each data custodian’s email account to the extent possible by identifying any available emails that were sent to or from the account of interest.

Information provided in a related matter by one of Secretary Clinton’s aides has also suggested that, since Secretary Clinton had a practice of sending emails to other official’s government email accounts, copies of her messages can be found within the government’s email system presumably in the accounts of those recipients.<sup>9</sup>

21. In addition to an enterprise-wide keyword search on the email server, other searches are

likely to provide an effective and efficient way to centrally find relevant emails. For example, departmental file servers are often a good location to find older emails because they allow employees to store files in a single location. Since email servers do not have

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<sup>8</sup><https://technet.microsoft.com/en-us/library/Dd335072%28v=EXCHG.141%29.aspx>

<sup>9</sup> Judicial Watch v. U.S. Department of State, Case Number 13-CV-1363-EGS, Joint Status Report filed on June 19, 2015, Exhibit D.

infinite space, mailbox quotas are typically implemented which require users to periodically remove emails from the server. Users often do not want to simply delete older messages so it is common for them to create an alternative storage location to archive these emails. Very often, this alternative location is the departmental file server as it allows the data to be backed up and secured.

22. Though it is undetermined if the Defendant utilizes an email archive server, many enterprises that frequently encounter litigation or FOIA requests use such servers. An email archive server essentially archives every email to/from the enterprise and stores it in a large centralized database. This allows all emails to be readily searched and produced based on attributes such as Sender, Recipient, Sent Date, Subject, and keywords in the messages. If the Defendant has such a system, the level of effort to conduct not only an enterprise-wide keyword search of emails currently in the system but all historical emails would be minimal.

23. Lastly, another centralized location where emails can be searched is the backup system. Historically, searching backup media can be a time consuming task. However, focusing the search for email server data can reduce the time necessary. Depending on the technology used, tools may be available that allow searching and extracting of emails responsive to keywords without the need to fully restore the entire system.<sup>10</sup> Such tools would make searching through backups an easier process.

## **Conclusions**

24. Based on the unusual practice where key individuals bypassed their Department of State email accounts and used external email accounts to conduct business, the Defendant's

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<sup>10</sup> <http://www.krollontrack.com/information-management/email-management-for-exchange/archive-restoration/>

email server cannot adequately serve as a singular definitive location to search for responsive email documents. Because these circumstances are not typical, the typical search process used by the Defendant is not adequate in ensuring a reasonable search has been conducted.

25. In my experience and practice, when a custodian's email is unavailable or inadequately complete for review, I have found that there are numerous alternative locations which can facilitate the location of emails. In my opinion, the Defendant should implement the following additional searches at a minimum:

- a. an enterprise-wide search at the email server for all email to/from Department and external accounts for the key individuals;
- b. a search of the computers, cell phones, and USB storage devices used by any of the data custodians for messages from the key individual's Department and external accounts;
- c. a search of any departmental file servers, archive servers, and backup media for emails to/from the Department or external accounts for the key individuals.


26. While my knowledge of the Defendant's IT system has been limited due to the lack of information provided by the Defendant, I expect that, like any other large enterprise, the Defendant can perform the searches described above with relatively inexpensive tools and a reasonable amount of effort. The cost and effort involved in conducting these searches are very likely to be less than the cost and effort of continued litigation. I could be more precise in identifying specific search techniques that would reasonably locate responsive documents if I had more information such as:

- a. A comprehensive data custodian list;

- b. A list of all electronic devices used by key individuals, either issued by the Defendant or otherwise known to have accessed Department of State records;
- c. A description of the email system used and how emails are managed by the Defendant;
- d. A description of the file servers used and how files are managed by the Defendant;
- e. If the Defendant used an email archive server;
- f. A description of the Defendant implemented system backups;
- g. A copy of the Defendant's IT document retention policy along with a description on whether any information is automatically archived or purged and how backup media is handled; and/or
- h. If any of the data custodians used USB devices or made ad-hoc backups of data.

27. I reserve the right to supplement or amend these opinions and my analysis based on additional information that is obtained.

Executed this 21<sup>st</sup> day of August 2015

X  \_\_\_\_\_

## Exhibit A

New Mailbox Search

\*Required fields

Keywords

Type words to search for. Separate words with uppercase AND, OR, or NOT. Use double quotation marks to search for multi-word phrases. For wildcard searches, place an asterisk (\*) after the word.

clintonemail.com

☒ Include items that can't be searched

Message types to search: All message types

Select message types...

Messages To or From Specific E-Mail Addresses

Date Range

Mailboxes to Search

\* Select mailboxes to search:

☒ Search all mailboxes
☐ Search specific mailboxes or the mailboxes of members of distribution groups:

Add...

Remove

Search Name, Type, and Storage Location

The search name is applied to the folder in the destination mailbox where search results are stored.

\* Search name:

JudicialWatchFOIA

\* Results:

☐ Estimate the search results
☒ Copy the search results to the destination mailbox

☒ Enable deduplication
☐ Enable full logging

Select a mailbox in which to store the search results:

Discovery Search Mailbox

X Browse...

☒ Send me an e-mail when the search is done

Save Cancel

100%

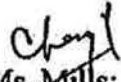
## EXHIBIT 2

(LETTERS OF CHERYL MILLS)



**UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON**

MAR 11 2015

  
Dear Ms. Mills:

Last week, the Department of State received the attached subpoena from the Select Committee on Benghazi, requesting certain documents and communications. I am writing to request your assistance, to the extent necessary, in meeting the requirements of this subpoena and properly preserving any potential federal records that may be in your custody related to your work on any topic, at any time, as an official at the Department of State.

The Federal Records Act of 1950, as amended, 44 U.S.C. chapters 29, 31 and 33, seeks to ensure the preservation of an authoritative record of official correspondence, communications, and documentation. In *Bulletin 2013-03*, the National Archives and Records Administration (NARA) clarified records management responsibilities regarding the use of personal email accounts for official government business. NARA recommended that agencies refer to its guidance when advising incoming and departing agency employees about their records management responsibilities. This bulletin was followed by additional NARA guidance on managing email issued on September 15, 2014. See attached.

We recognize that some or all of the NARA guidance may post-date your service at the Department. Nevertheless, we bring the NARA guidance to your attention in order to ensure that the Department's records and subpoena compliance are as complete as possible. Accordingly, we ask that should you be aware or become aware in the future of a federal record in your possession, such as an email sent or received on a personal email account while serving in your official capacity at the Department, that such record be made available to the Department. In this regard, please note that diverse Department records are subject to various disposition schedules, with certain records retained permanently. We ask that a

Ms. Cheryl Mills,  
c/o Ms. Beth Wilkinson,  
Paul, Weiss, Rifkind, Wharton & Garrett,  
2001 K Street NW,  
Washington, DC 20006-1047.

-2-

record be preserved and provided to the Department at your earliest convenience if there is any reason to believe that it may not otherwise be preserved in the Department's recordkeeping system.

The Department is willing to provide assistance to you in this effort. In the meantime, should you have any questions regarding this request, please do not hesitate to contact William Fischer, A/GIS/IPS/RA, Agency Records Officer, at (202) 261-8369.

We greatly appreciate your consideration of and assistance with this matter and ask that you respond in writing by March 18, 2015 as to whether you are aware of any potential federal records that may be in your custody related to your work on any topic, at any time, as an official at the Department of State. We would also greatly appreciate knowing when you will be able to provide any records to the Department.

Sincerely,



Patrick F. Kennedy

Attachments: (4)

1. Subpoena
2. 44 USC 3301
3. NARA Bulletin 2013-03
4. NARA Bulletin 2014-06

cc: William Fischer

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
2001 K STREET, NW  
WASHINGTON, DC 20006-1047  
TELEPHONE (202) 223 7300

BETH A. WILKINSON

TELEPHONE (202) 223 7340  
FACSIMILE (202) 204 7395  
E-MAIL: [bwilkinson@paulweiss.com](mailto:bwilkinson@paulweiss.com)

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FACSIMILE (212) 757 3990

UNIT 3601 FORTUNE PLAZA OFFICE TOWER A  
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TELEPHONE (86 10) 5826 6300

12TH FLOOR HONG KONG CLUB BUILDING  
3A CHATER ROAD CENTRAL  
HONG KONG  
TELEPHONE (852) 2846 0300

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10 NOBLE STREET  
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TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2 CHOME  
CHIYODA-KU TOKYO 100-0011 JAPAN  
TELEPHONE (81 3) 3597 8101

300 DELAWARE AVENUE SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655 4410

June 25, 2015

Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street NW  
Washington, DC 20520

Dear Under Secretary Kennedy:

I am further replying to your letter dated March 11, 2015, requesting the assistance of my client, Cheryl Mills, in meeting the requirements of the March 4, 2015 subpoena directed to Secretary Kerry and in preserving any potential federal records in Ms. Mills' custody.

Ms. Mills is in the process of providing documents in her possession to the Department of State that may potentially be federal records. Because Ms. Mills is tasked with searching through her entire personal email account over the course of several years for potential records, this process is not yet complete.

As you may know, Ms. Mills received a separate request on May 19, 2015 from the House Select Committee on Benghazi for "[a]ll documents that reflect any communication between you and any other person that refers to, relates to, or concerns the Attacks, any statement about the Attacks, or any response to the Attacks for the

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Patrick F. Kennedy

2

period from September 11, 2012 through and including September 30, 2012.” On June 9, 2015, the House Select Committee expanded the dates of their request to January 1, 2011 to December 30, 2012.

We are making efforts to complete our review process as quickly as possible, but have understandably been slowed by Ms. Mills’ international travel and my recent trial schedule. However, enclosed with this letter are all of the documents we have found to date that are potentially responsive to the House Select Committee’s May letter. We hope to provide additional documents in Ms. Mills’ possession from the broader time period on a rolling basis late next month.

Very truly yours,

A handwritten signature in black ink, appearing to read "Beth A. Wilkinson", with a long horizontal flourish extending to the right.

Beth A. Wilkinson

**UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON**

July 31, 2015

Beth A. Wilkinson  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
2001 K Street, NW  
Washington, DC 20006-1047

Dear Ms. Wilkinson:

I am writing in reference to my March 11, 2015, letter requesting that, should your client, Ms. Cheryl Mills, be aware or become aware of any federal record in her possession, she preserve and provide to the Department of State such record if there is any reason to believe that it may not otherwise be preserved in the Department's recordkeeping system. The Department appreciates your client's cooperation to date in identifying potential records and providing them to the Department.

For records management purposes, the Department asks that you and your client now take steps to return all copies of potential federal records in your possession to the Department as soon as possible. We understand that you and your client may wish to continue to have access to such documents if necessary to assist her in responding to congressional and related inquiries regarding the documents and her work at the Department. The Department is willing to permit you and your client such continued access given these ongoing inquiries. The Department can make arrangements for you and your client to access documents during regular working hours at the Department.

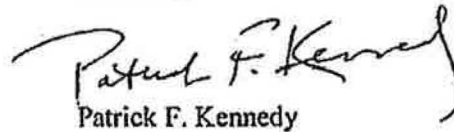
To the extent documents are stored electronically, we ask that you please copy them onto a digital video disc or compact disc. Once the copy has been made, please notify my office and we will arrange to pick up the storage medium. The Department asks that the documents be provided in original/native electronic format with the associated metadata. The Department's Office of Information Security (Frank Wilkins (571-345-3050)) will contact you regarding additional steps with respect to the disposition of your and/or your client's electronic copies of these documents.

Should you and your client have non-electronic copies of the documents, we ask that you box them up and notify my office so that we can arrange for their pickup.

-2-

In the event you have any questions regarding the transfer of the records to the Department, please contact the Agency Records Officer, William Fischer, at (202) 261-8369. In the meantime, I would appreciate it if you would confirm receipt of this letter in writing as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick F. Kennedy". The signature is fluid and cursive, with a large loop at the end of the last name.

Patrick F. Kennedy

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
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500 DELAWARE AVENUE, SUITE 200  
POST OFFICE BOX 32  
WILMINGTON, DE 19899-0032  
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER

202-223-7340

WRITER'S DIRECT FACSIMILE

202-204-7395

WRITER'S DIRECT E-MAIL ADDRESS

bwilkinson@paulweiss.com

August 6, 2015

By Hand

Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Under Secretary Kennedy:

I am in receipt of your letter dated August 5, 2015 regarding requests the Department of State has been ordered to make of my client Cheryl Mills in a Freedom of Information Act case, *Judicial Watch v. Department of State* (D.D.C. No. 13-cv-1363).

As a preliminary matter, I want to ensure the Department knows that Ms. Mills is not presently a government employee or a party to this lawsuit. I do want to take this opportunity, however, to clarify two things on her behalf in hopes that the Department can accurately describe Ms. Mills's tenure and circumstances at the State Department.


First, Ms. Mills did not have an account on Secretary Clinton's email server. Second, Ms. Mills has not been asked previously for any records responsive to this FOIA matter. She is not in a position to know what records are responsive and she therefore assumes that the Department has provided any records that reside in Department of State files. As you know, Ms. Mills received a request from the Department of State on March 11, 2015 that she assist the Department by preserving any potential federal records in her custody. On June 25, 2015, Ms. Mills provided a subset of potential federal records in

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2

her possession to the Department of State for review. She has provided additional documents to counsel for review in response to the March 11, 2015 letter. The review process is nearing completion and I expect to produce additional documents for the Department's review on August 10, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth A. Wilkinson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Beth A. Wilkinson



# EXHIBIT 3

(LETTERS OF HUMA ABEDIN)

**UNDER SECRETARY OF STATE**

**FOR MANAGEMENT**

**WASHINGTON**

**MAR 17 2015**

Dear Ms. Abedin:

Last week, the Department of State received the attached subpoena from the Select Committee on Benghazi, requesting certain documents and communications. I am writing to request your assistance, to the extent necessary, in meeting the requirements of this subpoena and properly preserving any potential federal records that may be in your custody related to your work on any topic, at any time, as an official at the Department of State.

The Federal Records Act of 1950, as amended, 44 U.S.C. chapters 29, 31 and 33, seeks to ensure the preservation of an authoritative record of official correspondence, communications, and documentation. In *Bulletin 2013-03*, the National Archives and Records Administration (NARA) clarified records management responsibilities regarding the use of personal email accounts for official government business. NARA recommended that agencies refer to its guidance when advising incoming and departing agency employees about their records management responsibilities. This bulletin was followed by additional NARA guidance on managing email issued on September 15, 2014. See attached.

We recognize that some or all of the NARA guidance may post-date your service at the Department. Nevertheless, we bring the NARA guidance to your attention in order to ensure that the Department's records and subpoena compliance are as complete as possible. Accordingly, we ask that should you be aware or become aware in the future of a federal record in your possession, such as an email sent or received on a personal email account while serving in your official capacity at the Department, that such record be made available to the Department. In this regard, please note that diverse Department records are subject to various disposition schedules, with certain records retained permanently. We ask that a record be preserved and provided to the Department at your earliest convenience if there is any reason to believe that it may not otherwise be preserved in the Department's recordkeeping system.

Ms. Huma Abedin,

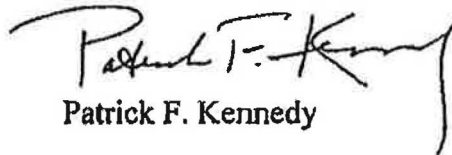
[REDACTED]

-2-

The Department is willing to provide assistance to you in this effort. In the meantime, should you have any questions regarding this request, please do not hesitate to contact William Fischer, A/GIS/IPS/RA, Agency Records Officer, at (202) 261-8369.

We greatly appreciate your consideration of and assistance with this matter and ask that you respond in writing by March 18, 2015 as to whether you are aware of any potential federal records that may be in your custody related to your work on any topic, at any time, as an official at the Department of State. We would also greatly appreciate knowing when you will be able to provide any records to the Department.

Sincerely,



Patrick F. Kennedy

Attachments: (4)

1. Subpoena
2. 44 USC 3301
3. NARA Bulletin 2013-03
4. NARA Bulletin 2014-06

cc: William Fischer

June 29, 2015

Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street, NW  
Washington, DC 20520

Dear Under Secretary Kennedy:

We are writing in reply to your letter, dated March 11, 2015, requesting Ms. Huma Abedin's assistance in responding to a subpoena directed to Secretary John Kerry from the House Select Committee on Benghazi and in preserving any potential federal records in her possession relating to her work with the Department from 2009 to 2013. Ms. Abedin and we seek to be as helpful as possible and are working diligently to collect the documents requested.

As you may already know, our ability to respond unfortunately was slowed by circumstances beyond Ms. Abedin's control. The Department's initial correspondence, sent by mail and dated March 11, 2015, was returned undelivered to the Department on April 17, 2015. Similarly, we understand that your office attempted to send an electronic mail copy of that letter to Ms. Abedin, but that email was sent to domains (@clinton.senate.gov and @hillaryclinton.com) that, as of March 2015, had not been active for the past several years.

Your request ultimately reached Ms. Abedin through counsel on May 19, 2015, when we received your letter via mail, along with the returned envelope and a cover note dated May 12, 2015 explaining that the letter had been returned undelivered. As a consequence, Ms. Abedin received the Department's request for documents more than two months after it was initially intended to reach her.

On the same day that we received the Department's letter requesting the assistance of our client, we received a request directed to Ms. Abedin from the House Select Committee on Benghazi for "documents that reflect any communication between Huma Abedin and any other person that refers to, relates to, or concerns the Attacks, any statement about the Attacks, or any response to the Attacks for the period from September 11, 2012 through and including September 30, 2012."

On June 1, 2015, the Select Committee sent a letter superseding its earlier request to Ms. Abedin. The Committee's June 1 letter expanded the dates of its request to January 1, 2011 to December 31, 2012, as well as the scope of its request, to include "any and all documents and communications sent or received by [Ms. Abedin] from any and all non-State Department email address(es) she utilized, referring or relating to a) Libya (including but not limited to Benghazi and Tripoli), and/or b) weapons located or found in, imported or brought into, and/or exported or removed from Libya."

Since we received the Department's and the Committee's requests on May 19, we have been working diligently to respond. Of course, the delay in receipt of the Department's request and

Patrick F. Kennedy  
Page 2 of 2  
June 29, 2015

the simultaneous receipt of the Committee's request, subsequently expanded in date and scope, may mean that this process will take longer than the Department initially may have hoped. Nevertheless, we are on track to provide the Department documents responsive to the Select Committee's June 1, 2015 letter within the next several weeks and hope to work closely with the Department on a timetable for providing any other potential federal records in Ms. Abedin's possession.

We also understand that the Department is defending a lawsuit brought under the Freedom of Information Act (FOIA) regarding a request for a) copies of any updates and/or talking points given to Ambassador Rice by the White House or any federal agency concerning, regarding, or related to the September 11, 2012 attack on the U.S. consulate in Benghazi, Libya; and b) any and all records or communications concerning, regarding, or relating to talking points or updates on the Benghazi attack given to Ambassador Rice by the White House or any federal agency. To date, in the course of our review, we have not identified documents responsive to this FOIA request.

Sincerely,

/s/ Karen L. Dunn  
Karen L. Dunn  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015

/s/ Miguel E. Rodriguez  
Miguel E. Rodríguez  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

July 9, 2015

**By Hand Delivery**

Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street NW  
Washington, DC 20520

Dear Under Secretary Kennedy:

We write in reply to your request for Ms. Huma Abedin's assistance in responding to a subpoena directed to Secretary John Kerry from the House Select Committee on Benghazi and in preserving any potential federal records in her possession relating to her work with the Department from 2009 to 2013.

As you know, Ms. Abedin and we have been diligently working to provide documents in response to a separate request from the Select Committee for "any and all documents and communications sent or received by [Ms. Abedin] from any and all non-State Department email address(es) she utilized, referring or relating to a) Libya (including but not limited to Benghazi and Tripoli), and/or b) weapons located or found in, imported or brought into, and/or exported or removed from Libya." The materials requested by the Select Committee, which relate to her work activities on behalf of the Department, are naturally a subset of those the Department has requested.

Enclosed herewith are documents identified by Ms. Abedin as responsive or potentially responsive to the Select Committee's request and therefore also to your request. As you may know, we alerted the Department earlier this week to expect this production and made the Department aware that the Select Committee has set a July 13, 2015 return date on its request to Ms. Abedin. We understand that the Department will conduct a privilege, privacy, and departmental review and, in turn, provide materials to the Select Committee. Inevitably, and due to Ms. Abedin's desire to be as helpful as possible, this production will include documents or portions of documents that are not federal records.

Finally, we have notified the Department that we are continuing to work on gathering the larger set of documents responsive to your broader request for potential federal records in Ms. Abedin's possession. We look forward to working with Department on a timetable and process for providing those additional documents.

Sincerely,



Karen L. Dunn  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015



Miguel E. Rodriguez  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

**UNDER SECRETARY OF STATE  
FOR MANAGEMENT  
WASHINGTON**

July 31, 2015

Karen L. Dunn  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015

Miguel E. Rodriguez  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

Dear Ms. Dunn and Mr. Rodriguez:

I am writing in reference to my March 11, 2015, letter requesting that, should your client, Ms. Huma Abedin, be aware or become aware of any federal record in her possession, she preserve and provide to the Department of State such record if there is any reason to believe that it may not otherwise be preserved in the Department's recordkeeping system. The Department appreciates your client's cooperation to date in identifying potential records and providing them to the Department.

For records management purposes, the Department asks that you and your client now take steps to return all copies of potential federal records in your possession to the Department as soon as possible. We understand that you and your client may wish to continue to have access to such documents if necessary to assist her in responding to congressional and related inquiries regarding the documents and her work at the Department. The Department is willing to permit you and your client such continued access given these ongoing inquiries. The Department can make arrangements for you and your client to access documents during regular working hours at the Department.

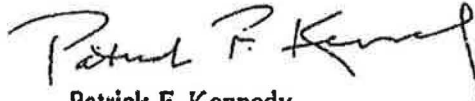
To the extent documents are stored electronically, we ask that you please copy them onto a digital video disc or compact disc. Once the copy has been made, please notify my office and we will arrange to pick up the storage medium. The Department asks that the documents be provided in original/native electronic format with the associated metadata. The Department's Office of Information Security (Frank Wilkins (571-345-3050)) will contact you regarding additional steps with respect to the disposition of your and/or your client's electronic copies of these documents.

-2-

Should you and your client have non-electronic copies of the documents, we ask that you box them up and notify my office so that we can arrange for their pickup.

In the event you have any questions regarding the transfer of the records to the Department, please contact the Agency Records Officer, William Fischer, at (202) 261-8369. In the meantime, I would appreciate it if you would confirm receipt of this letter in writing as soon as possible.

Sincerely,



Patrick F. Kennedy



August 6, 2015

**By Email**

Patrick F. Kennedy  
Under Secretary for Management  
United States Department of State  
2201 C Street, NW  
Washington, DC 20520

Dear Under Secretary Kennedy:

We write to ensure that there is clarity about Ms. Abedin's considerable efforts and diligence in complying with your request dated March 11, 2015, which seeks Ms. Abedin's assistance in meeting the requirements of a subpoena to Secretary John Kerry from the House Select Committee on Benghazi ("Committee"), and in properly preserving any potential federal records in Ms. Abedin's possession. Because we believe it is important to accurately represent the status of Ms. Abedin's productions to the Department, we request that the Department share this correspondence, or the details contained herein, with parties asking about her cooperation.

As we explained in our June 29, 2015 letter to you, Ms. Abedin's initial ability to respond was impeded by the Department's failure to ensure that the request timely reached Ms. Abedin. Your March 11, 2015 letter was sent by mail to an incorrect address and returned undelivered to the Department on April 17, 2015. Over one month later, on May 19, 2015 we received your letter via mail, along with the returned envelope (indicating the April 17, 2015 date) and a cover note dated May 12, 2015 explaining that the letter had been returned undelivered. Similarly, we understand that your office attempted to send an email copy of the March 11, 2015 letter to Ms. Abedin, but that the email was sent to two email addresses that had not been active for years, an old United States Senate email address (@clinton.senate.gov) and an old email address associated with Former Secretary Clinton's 2008 Presidential campaign (@hillaryclinton.com).

As a consequence of the Department's three failed delivery attempts, Ms. Abedin received the Department's request for documents more than two months after it was intended to reach her. Immediately upon receiving the Department's request, Ms. Abedin began taking steps to respond and since that time has been working expeditiously to provide documents to the Department. It should go without saying that there is nothing she could have done prior to May 19, 2015, given that no one at the Department reached out to Ms. Abedin or her counsel regarding your March 11, 2015 letter request.

Notwithstanding this, Ms. Abedin has already made an initial production of potential federal records to the Department. We prioritized the request of the Department for assistance in complying with the Committee's subpoena to Secretary Kerry for Ms. Abedin's documents and emails broadly relating to Libya, in part because we understand the Department has been working to provide such documents to the Committee since the Committee first requested them of the Department in 2014. On July 9, Ms. Abedin produced to the Department 338 pages of

Patrick F. Kennedy

Page 2 of 2

August 6, 2015

potential federal records in her possession that are potentially responsive to the Committee's subpoena to the Department.

We have been working expeditiously to gather the remaining materials in Ms. Abedin's possession that are responsive or potentially responsive to your request. Despite the Department's delay in delivering that request, because of Ms. Abedin's diligence and expeditious review, we expect to be able to make a production on August 7 and a final production on or before August 28.

Please let us know if you have any questions. We look forward to our continued cooperation with the Department.

Sincerely,

/s/ Karen L. Dunn

Karen L. Dunn  
Boies, Schiller & Flexner LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015

/s/ Miguel E. Rodriguez

Miguel E. Rodriguez  
Bryan Cave LLP  
1155 F Street, NW  
Washington, DC 20004

cc: Richard Visek  
Office of the Legal Adviser

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.

*Plaintiff,*

v.

DEPARTMENT OF STATE,

*Defendant.*

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Civil Action No. 14-1242 (RCL)

**[PROPOSED] ORDER**

Upon consideration of Judicial Watch's Motion to Allow Time for Limited Discovery Pursuant to Rule 56(d), any opposition thereto, and reply in support hereof, any oral argument and the record herein, it is hereby

ORDERED that Judicial Watch's Motion to Allow Time for Limited Discovery Pursuant to Rule 56(d) is **GRANTED**.

Dated:

\_\_\_\_\_  
U.S. District Court Judge

Cc: All counsel of record