

**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. 13-cv-1363 (EGS)

**PLAINTIFF’S MOTION FOR PERMISSION TO DEPOSE
HILLARY CLINTON, CLARENCE FINNEY, AND JOHN BENTEL**

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

STATEMENT OF POINTS AND AUTHORITIES

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

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

In its Order, the Court directed that “Plaintiff must seek the Court’s permission to conduct discovery beyond the depositions and the interrogatories” identified by the parties. Order at 15. The Court also stated, “Based on information learned during discovery, the deposition of Mrs. Clinton may be necessary. If Plaintiff believes Mrs. Clinton’s testimony is required, it will request permission from the Court at the appropriate time.” *Id.* at 14. After concluding the discovery authorized by the Court, Plaintiff believes it is necessary to depose three additional witnesses: Secretary Clinton; Clarence Finney, the State Department official responsible for management of the secretary’s records, including FOIA responses for those

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

records; and John Bentel, the former State Department official that was responsible for Secretary Clinton's information technology systems.²

I. Secretary Clinton.

Secretary Clinton's testimony is necessary because Plaintiff still requires definitive answers to the following questions, among others:

A. The purpose for the clintonemail.com system.

Plaintiff anticipated that Ms. Mills, Ms. Abedin, and Mr. Pagliano might provide testimony about why Secretary Clinton chose to create the clintonemail.com system to conduct official government business instead of using an official State Department email account. Neither Ms. Mills nor Ms. Abedin was able to provide definitive answers, however, and Mr. Pagliano invoked his Fifth Amendment right against self-incrimination rather than answer Plaintiff's questions. *See generally* Pagliano Deposition.

Neither Ms. Mills nor Ms. Abedin spoke with Secretary Clinton about the purpose for creating the clintonemail.com system. *See* Mills Deposition at 45:7 – 45:20 and Abedin Deposition at 71:16 – 73:2. They understood Secretary Clinton to be continuing her general practice of using a personal email account to conduct official government business when, in the course of their State Department work, they started receiving emails from the secretary on the clintonemail.com system. *See* Mills Deposition at 45:7 – 45:20 and Abedin Deposition at 71:16 – 73:2. Neither could identify why Secretary Clinton continued this practice at the State

² Plaintiff intends to depose these individuals within four weeks of the Court's order on Plaintiff's motion. Plaintiff anticipates that no further discovery will be needed in this case.

Department even though, unlike during her tenure as a U.S. senator, the secretary's emails were subject to federal recordkeeping statutes and FOIA.

Plaintiff also anticipated that the senior State Department officials responsible for logistics for the Office of the Secretary might provide testimony concerning the State Department's knowledge about the creation of the clintonemail.com system and Secretary Clinton's decision to use the clintonemail.com system to conduct official government business. Neither former Executive Secretary Stephen Mull nor former Deputy Executive Secretary Lewis Lukens could shed light on this issue. Nor could Under Secretary for Management Patrick Kennedy provide any clarity to the situation. Executive Secretary Mull testified that he did not know whether Secretary Clinton was using the clintonemail.com account for personal or official government business and had no basis for knowing how she was using her BlackBerry. *See* Mull Deposition at 132:8 – 133:5. Deputy Executive Secretary Lukens testified that he believed Secretary Clinton used the account to communicate with friends and family only. *See* Lukens Deposition at 82:19-22. Under Secretary Kennedy testified that he did not recall any discussion about Secretary Clinton wanting to communicate by email with State Department officials or employees and, like Deputy Executive Secretary Lukens, believed she wanted to communicate with her family. *See* Kennedy Deposition at 48:11 – 49:20; 50:3 – 50:7. He even denied, at least initially, knowing contemporaneously that Secretary Clinton used an unofficial email account for her official email communications. *See id.* at 9:22 – 10:6 (“[W]hen did you first become aware that Mrs. Clinton was using a non-State.gov email address for State Department business? I believe it was probably in March of 2015 . . . From newspaper account.”); *see also id.* at 51:16 – 52:22.

Secretary Clinton's testimony is necessary to answer the "questions surrounding the creation, purpose and use" of the clintonemail.com system. It was her system. She was the primary driving force behind it and was its principal user. She chose to make exclusive use of the system for all of her official email communications and to allow one of her key aides, Ms. Abedin, to use the unofficial system for official communications as well. Without Secretary Clinton's testimony, there can be no fair, rightful, and conclusive answer to the Court's questions.³

B. Secretary Clinton's continued use of the system even though, at times, it interfered with her job as secretary.

Evidence obtained through discovery shows that the clintonemail.com system appears to have suffered multiple and repeated technical problems, weather-related disruptions, and known incidents of hacking. *See, e.g.*, Mull Deposition at Exhibits 5 and 6; Exhibit 2 at documents B, D, and E. On one occasion, a technical problem with the system caused Secretary Clinton to miss a telephone call with a foreign minister because an email from the clintonemail.com system never made its way to the appropriate State Department employees. *See* Abedin Deposition at

³ In his statement announcing the conclusion of the FBI investigation into Secretary Clinton's email practices, Director Comey stated, "The FBI also discovered several thousand work-related e-mails that were not in the group of 30,000 that were returned by Secretary Clinton to State in 2014." *See* Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b.-comey-on-the-investigation-of-secretary-hillary-clintons-use-of-a-personal-e-mail-system>. The FBI's finding raises questions about Secretary Clinton's assertions in her August 8, 2015 declaration that she directed that all her emails on the clintonemail.com system in her custody "that were or potentially were federal records be provided to the Department of State" and that "on information and belief, this has been done." Secretary Clinton's deposition is necessary to inquire about the basis of these assertions in light of the FBI's finding.

184:21 – 185:4. Both Secretary Clinton and Ms. Abedin were frustrated by this failure. *See id.* at 185:15 – 186:1. During the incident, Secretary Clinton commented to Ms. Abedin in an email, “This is not a good system.” *See* Exhibit 2, document B. Ms. Abedin responded, “We should talk about putting you on state email or releasing your email address to the department so you are not going to spam.” *See id.* Secretary Clinton replied, “Let’s get separate address on device but I don’t want any risk of the personal being accessible.” *See id.*

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

Through her aides, Secretary Clinton later inquired again about use of an alternative email system. As a document previously submitted to the Court shows, in August 2011 Executive Secretary Mull emailed Cheryl Mills, Huma Abedin, Under Secretary Kennedy, and Monica Hanley, an assistant to Secretary Clinton, about ways in which the State Department could resolve issues Secretary Clinton was having with email and other communications. *See* Mull Deposition at Exhibit 6. The email, in part, states:

Separately, we are working to provide the Secretary per her request a Department issued Blackberry to replace her personal unit which is malfunctioning (possibly because of her personal email server is down). We will prepare two versions for her to use – one with an operating State Department email account (which would mask her identity, but which would also be subject to FOIA requests), and another which would just have phone and internet capability.

Id. A document recently produced to Plaintiff during the course of discovery shows that, shortly thereafter, Ms. Hanley asked Mr. Bentel, the head of the Office of the Secretary’s IT department, what Secretary Clinton’s email address would be on a State Department Blackberry. *See* Exhibit 2, document C. Mr. Bentel replied, in part, “You should be aware that any email would go through the Department’s infrastructure and [be] subject to FOIA searches.” *See id.* This response subsequently was forwarded to Ms. Abedin. *See id.* An hour later, Ms. Abedin responded to Executive Secretary Mull, “Let’s discuss the state blackberry, doesn't make a whole lot of sense.” *See* Mull Deposition at Exhibit 6.

This evidence suggests that, despite the recurrent problems, frustration, and security issues associated with Secretary Clinton’s use of the clintonemail.com system (and after her staff was reminded about FOIA obligations),⁴ the secretary nonetheless decided to continue using the system to conduct official government business instead of switching to an official, State Department email system. Only Secretary Clinton can answer why she chose to continue using

⁴ Secretary Clinton’s key staffers appear to have been well aware of their FOIA obligations. Ms. Abedin testified that she knew that her emails on the clintonemail.com system relating to official government business were subject to FOIA. *See* Abedin Deposition at 115:9 – 115:16. Ms. Mills knew that her emails were subject to FOIA as well, as she and her staff searched her emails in response to FOIA requests. *See* Mills Deposition at 194:22 – 196:8. Ms. Mills also believed Secretary Clinton’s emails were subject to FOIA. *See id.* at 183:9 – 183:16.

this flawed, frustrating, non-secure system for her official State Department emails, as well as what she meant about not “want[ing] any risk of the personal being accessible.”

C. Secretary Clinton’s claim over the records on the clintonemail.com system.

Secretary Clinton has repeatedly asserted that her use of the clintonemail.com system was “allowed,” raising questions about whether the State Department authorized the system’s use, whether Secretary Clinton claimed any personal right or exclusive control over the emails on the clintonemail.com system, and whether the State Department maintained constructive control or, conversely, ceded control over the emails on the system. *See Competitive Enterprise Institute v. Office of Science and Technology*, Case No. 15-5128, slip op. at 6-9 (D.C. Cir. July 5, 2016). No witness was able to testify as to whether Secretary Clinton was advised to use a state.gov email account to conduct official government business or whether the State Department authorized Secretary Clinton to use a non-state.gov email account to conduct official government business. *See e.g.*, Kennedy Deposition at 55:18 – 55:21; Mull Deposition at 113:14 – 113:17; and Abedin Deposition at 36:5 – 36:18; 78:5 – 78:11. Knowing whether the system was formally authorized or even informally allowed is a key component of understanding whether Secretary Clinton claimed any personal right or exclusive control over the records on the clintonemail.com system, and, correspondingly, whether the State Department “ceded the relevant records” to Secretary Clinton. *Competitive Enterprise Institute*, Case No. 15-5128, slip. op. at 7.

Secretary Clinton’s understanding about whether federal recordkeeping laws and FOIA applied to the emails on the clintonemail.com system and her treatment and handling of these emails also bears on this same issue. Ms. Abedin was unable to testify as to whether Secretary

Clinton thought FOIA applied to the emails on the clintonemail.com system relating to State Department business. *See* Abedin Deposition at 115:17 – 116:3. Ms. Mills testified that no one thought about the issue. *See, e.g.,* Mills Deposition at 189:8 – 190:21. Ms. Abedin also testified that Plaintiff “would have to ask Mrs. Clinton” about whether the secretary understood FOIA applied to the system. *See* Abedin Deposition at 115:17 – 116:3. Similarly, Ms. Abedin testified that she did not know how Secretary Clinton managed her clintonemail.com inbox during her tenure as secretary or whether she deleted work-related emails. *See id.* at 121:12 – 121:15. Whether Secretary Clinton made a point of preserving work-related emails on the clintonemail.com system or whether she regularly deleted or caused such emails to be deleted is relevant to whether she believed the emails were State Department records or her records. The secretary’s testimony is necessary to answer these additional questions about the clintonemail.com system.

D. Secretary Clinton’s inventorying of records upon completion of her tenure as secretary.

Ms. Abedin’s testimony revealed a previously undisclosed meeting between Mr. Finney, Ms. Abedin and other personnel from the Office of the Secretary about what records Secretary Clinton and her staff were allowed to take with them when they left the State Department. *See* Abedin Deposition at 46:3 – 46:17; 135:18 – 141:22. The meeting took place “a few months” before Secretary Clinton took office. *See id.* at 140:6-10. At the meeting, Mr. Finney informed Ms. Abedin and Secretary Clinton’s staff that they were required to return their blackberries and “that the only materials [that they] were allowed to leave with . . . were [their] personal photos that may have been taken on [their] State Department blackberries . . . and [their] contact[]

[lists].” *See id.* at 137:11 – 137:17. “[E]verything else was left on our laptops, preserved on our laptops. And I was given a disk, a CD disk, that had my contacts and my – my photos on it. And I left with that. Everything else stayed.” *See id.* at 137:19 – 138:1. Either at that same meeting or another, procedures were provided for packing up the secretary’s office. *See id.* at 142:12 – 143:10. These procedures included packing items allowed to be removed in boxes that were not sealed until the protocol office had signed off on the items. *See id.*

Further, no one appears to have informed Mr. Finney, either at the meeting or afterwards, about the tens of thousands of State Department-related emails on the clintonemail.com system even though all of the staff present at the meeting communicated with Secretary Clinton and Ms. Abedin on their clintonemail.com email accounts. *See* Abedin Deposition at 143:22-145:10. In addition, Ms. Abedin testified that she was not aware of any instructions provided by Secretary Clinton with respect to official emails on the clintonemail.com system. *See id.* at 143:11 – 143:15. Nor did Ms. Abedin remember if she or anyone else asked Secretary Clinton for any instructions with respect to official emails on the system. *See id.* at 143:16 – 143:21. As a result, Secretary Clinton’s testimony is necessary to determine what she understood her obligations to be with respect to official State Department records when she left office and why record management officials apparently were not advised about official, government records on the clintonemail.com system when the secretary transitioned out of the department, especially given the very limited amount of materials that were allowed to be taken and the strict protocols in place to preserve federal records and federal property. Answers to these questions will provide clarity as to the purpose and use of the system.

E. Secretary Clinton's choice of type of email system to conduct official government business.

At the beginning of her tenure as secretary, Secretary Clinton chose not to use the State Department email system or even a commercially available email system such as Gmail. Because of this decision, Secretary Clinton's emails were not archived. *See* Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal E-Mail System, available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b.-comey-on-the-investigation-of-secretary-hillary-clintons-use-of-a-personal-e-mail-system> ("Because she was not using a government account—or even a commercial account like Gmail—there was no archiving at all of her e-mails . . ."). There is no dispute that Secretary Clinton used a commercial email system – her at&t.blackberry.net address – as a U.S. senator before transitioning to her clintonemail.com account when she became U.S. Secretary of State. *See* Abedin Deposition at 42:10 – 43:14. The change to a non-archived system after becoming U.S. Secretary of State is noteworthy because an archiving system would have ensured that her official emails were preserved for future use, access, and review. The absence of an archiving system raises further questions about the purpose of the clintonemail.com system that only Secretary Clinton can answer.

F. Mr. Pagliano's role in creating and operating the clintonemail.com system.

Mr. Pagliano was a "Schedule C" political appointee in the State Department's Bureau of Information Resources Management. *See* Kennedy Deposition at 70:10 – 71:20. In that capacity, Mr. Pagliano appears to have assisted the department in resolving issues affecting the ability of State Department employees to use their official accounts to send emails to and receive

emails from the clintonemail.com system. *See* Exhibit 2, document D. Before his appointment, Mr. Pagliano had worked as an information technology specialist for Secretary Clinton's 2008 presidential campaign. *See* Abedin Deposition at 23:1 – 24:6 and Mills Deposition at 93:14 – 94:8; 155:1 – 155:16. Mr. Pagliano also provided information technology services for Secretary Clinton and/or former President Clinton while employed by the State Department. *See* Abedin Deposition at 61:6 – 63:12; 70:3 – 70:12; Mills Deposition at 93:14 – 94:8; 160:10 – 161:4; and Kennedy Deposition at 70:13 – 73:15.

Because Mr. Pagliano invoked his Fifth Amendment right against self-incrimination and no other witness could provide meaningful testimony about how or why Mr. Pagliano was appointed or the work he may have performed on the clintonemail.com system, either for the State Department or for the secretary and/or President Clinton, Plaintiff has been unable to develop evidence from this important source. As a result, Secretary Clinton's testimony is necessary to develop a full understanding of Mr. Pagliano's appointment and the role he played in the clintonemail.com system.

* * *

Plaintiff recognizes the significance of asking a former agency head and presumptive nominee for president to sit for a deposition.⁵ As the primary driving force behind and principal user of the clintonemail.com system, however, Secretary Clinton's testimony is crucial to understanding how and why the system was created and operated. It also is crucial to

⁵ *See Landmark Legal Foundation v. Environmental Protection Agency*, 959 F. Supp. 2d 175 (D.D.C 2013) (permitting the deposition of a former agency head to determine use of private email account for official government business).

understanding why the secretary chose to use the system for all her official email communications, not only initially but also after the system proved to be so problematic for the department, top departmental officials, and the secretary herself. Plaintiff has attempted to obtain as much evidence as possible from other State Department officials, but Secretary Clinton is an indispensable witness and significant questions remain, including why records management officials apparently had no knowledge of the system when so many other officials used the system to communicate with her. Consequently, Secretary Clinton's deposition is necessary. Plaintiff proposes that the deposition be taken at a time and place most convenient to Secretary Clinton's schedule and that the deposition not exceed three hours in length. Plaintiff is concurrently providing a copy of this motion to Secretary Clinton's personal attorney.

II. Clarence Finney.

The State Department identified Mr. Finney as the Director of Office of Correspondence and Records of the Executive Secretariat ("S/ES-CRM"), which had day-to-day responsibility for records management and research, including conducting and coordinating searches in response to FOIA requests, during Secretary Clinton's and Ms. Abedin's tenure.⁶ *See* Exhibit 1 at 1-2. Mr. Finney's responsibilities included determining what searches were to be conducted within the Office of the Secretary in response to FOIA requests. *See* Lang Deposition at 35:19 – 36:7. In addition, Mr. Finney's office was responsible for inventorying or other accounting of Secretary

⁶ When asked whether the Office of the Executive Secretariat had its own FOIA guidance or operating procedures, Executive Secretary Mull testified that he could not recall any specific document but that "Mr. Finney was aware of his responsibilities, based on his assurances." *See* Mull Deposition at 39:7 – 39:15.

Clinton's and Ms. Abedin's emails. *See* Exhibit 1 at 3-4. As a result, Mr. Finney should have personal knowledge about how Secretary Clinton's records were managed and how FOIA requests for Secretary Clinton's records were processed while she was secretary.⁷

The evidence suggests that Mr. Finney was not aware of the clintonemail.com system. Ms. Abedin did not know whether Mr. Finney was aware that both she and Secretary Clinton used clintonemail.com email accounts to conduct official government business. *See* Abedin Deposition at 44:17 – 45:22; 46:18 – 46:21. Mr. Finney had at least two conversations about Secretary Clinton's email practices. The first occurred when Secretary Clinton took office. *See* Lang Deposition at 61:13 – 63:3. The second occurred when Mr. Finney saw a photograph of Secretary Clinton using a Blackberry. *See id.* at 63:18 – 64:9. In addition, Ms. Abedin testified that, early in Secretary Clinton's tenure, she and others from the Office of the Secretary met with Mr. Finney to discuss what records Secretary Clinton and her staff could bring to the State Department. *See* Abedin Declaration at 46:3 – 46:17; 135:18 – 141:22. Another meeting was held near the end of Secretary Clinton's tenure to discuss what the secretary and her staff could take with them when they left the department. *Id.* Mr. Finney does not appear to have been made aware of the clintonemail.com system at either meeting. Therefore, questions remain about how and why Mr. Finney was not made aware of the clintonemail.com system.

⁷ When asked about whether Secretary Clinton communicated “with the folks responsible for records in the Executive Secretariat[.]” Ms. Mills testified, “She engaged with them every day. Part of her day-to-day engagement would be with her special assistants, with the Executive Secretary himself or herself, whoever was the Exec[utive] Secretary. She was in routine communication and contact with them.” *See* Mills Deposition at 262:7 – 263:1.

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

Simply put, Mr. Finney can provide direct testimony concerning whether he knew about the clintonemail.com system, what efforts he made to find out what systems Secretary Clinton was using for her official emails, what he was told about the use of the unofficial system by Secretary Clinton and Ms. Abedin to conduct official government business, and, perhaps most significantly, what he was not told about the system.

III. John Bentel.

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

Specifically, during Secretary Clinton's tenure at the State Department, Mr. Bentel was director of S/ES-IRM, the office responsible for information technology for the Office of the Secretary. In that capacity, he oversaw employees that helped facilitate Secretary Clinton's use of the clintonemail.com system. For example, as noted above, employees within S/ES-IRM worked with the State Department's general information technology department to resolve issues affecting the ability of emails transmitted through Secretary Clinton's email account to reach State Department officials and employees using their state.gov email accounts. *See* Exhibit 2, document D. In addition, Mr. Bentel appears to have been made aware of the clintonemail.com server as early as March 2009, when a review of communications systems at Secretary Clinton's

residence was undertaken and the server was identified as an “Unclassified Partner System.” *See* Exhibit 2, document A.

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

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

See OIG Report at 40.

Mr. Bentel also reminded Secretary Clinton’s staff about FOIA requirements. As noted above, in August 30, 2011, Monica Hanley, an assistant to Secretary Clinton, emailed Mr. Bentel and asked him what Secretary Clinton’s email address would be on a State Department Blackberry. In response, Mr. Bentel stated, in part, “You should be aware that any email would go through the Department’s infrastructure and [be] subject to FOIA searches.” *See* Exhibit 2, document C.

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

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

* * *

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

Dated: July 8, 2016

Respectfully submitted,

/s/ Michael Bekesha
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Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
STATE,

Defendant.

Civil Action No. 13-CV-1363 (EGS)

**DEFENDANT'S RESPONSES AND OBJECTIONS TO
PLAINTIFF'S INTERROGATORIES**

In accordance with Rule 33 of the Federal Rules of Civil Procedure, Defendant United States Department of State, by and through undersigned counsel, hereby responds to Plaintiff's Interrogatories:

INTERROGATORY NO. 1:

Who was responsible for processing and/or responding to record requests, including FOIA requests, concerning emails of Mrs. Clinton and other employees of the Office of the Secretary?

Response: The State Department objects to this interrogatory as vague and overbroad on the grounds that it fails to define "responsible" or "concerning"; does not define a relevant time period; and does not identify any individual in the Office of the Secretary, of which there were many who served over the years. The State Department additionally objects to this interrogatory to the extent that it seeks information on FOIA requests unrelated to Secretary Clinton or Huma Abedin, the individuals identified in the Court's May 4, 2016 Order on the scope of discovery. The State Department further objects to this interrogatory to the extent it seeks information

regarding processing and/or responding to non-FOIA record requests, which is beyond the scope of discovery as ordered by the Court. Without waiving its objections, the State Department provides the following response, which provides information about offices and individuals who had management responsibility for processing FOIA requests related to Secretary Clinton and Huma Abedin between January 21, 2009 (the date Secretary Clinton took office) and February 19, 2016 (the date on which the State Department filed its final search declaration in this matter).

The Office of Information Programs and Services (“IPS”) serves as the primary point of contact and principal advisor on all matters concerning the management of information, including with respect to requests pursuant to the Freedom of Information Act (“FOIA”). 1 FAM 214.2(b). The Director of IPS is responsible for processing and responding to requests for access to information under the FOIA. 22 C.F.R. 171.11. The IPS Directors from January 2009 to February 2016 were: Margaret Grafeld (from before January 2009 to March 2010), Alex Galovich and Charlene Thomas (Acting Co-Directors from March 2010 – December 2011), Sheryl Walter (December 2011 – March 2014); and John Hackett (Acting Director: March 2014 – June 2015; Director: June 2015 – March 2016).

Upon receipt of a FOIA request, IPS staff evaluate the request to determine which offices, overseas posts, or other records systems within the Department may reasonably be expected to contain the records requested. A FOIA request concerning emails of former Secretary Clinton and/or Ms. Abedin was typically sent to the Office of Correspondence and Records of the Executive Secretariat (“S/ES-CR”). S/ES-CR had day-to-day responsibility for records management and research, including conducting and coordinating searches in response to FOIA requests. *See* 1 FAM 022.2-3 (August 6, 2001). During former Secretary Clinton’s and Ms. Abedin’s tenures, the Director of S/ES-CR was Clarence Finney. Effective January 21,

2013, S/ES-CR was merged with another Executive Secretariat office, the Executive Secretariat Staff (“S/ES-S”). Currently, the Correspondence, Records, and Staffing Division of S/ES-S is responsible for proper records management of documents for Department principals, as well as retrieval of archived documents upon request. 1 FAM 022.2-2(2). Clarence Finney has held the position of Deputy Director of S/ES-S and head of the Correspondence, Records, and Staffing Division from the time of the merger to the present. The Directors of S/ES-S since the time of the merger have been Paul Horowitz (January 2013 – March 2014), MaryKay Carlson (March 2014 – November 2014), Mary Katherine Stana (December 2014 – July 2015) and Karin Lang (July 2015 to the present).

INTERROGATORY NO. 2:

Who was responsible for the inventorying or other accounting of Mrs. Clinton’s and Ms. Abedin’s emails, records, and information?

Response: The State Department objects to the terms “responsible,” “inventorying,” “accounting,” and “information” as vague and overbroad. The State Department additionally objects to this interrogatory on the grounds that it exceeds the permissible scope of discovery under the Court’s Order. The State Department further objects to this interrogatory on the grounds that it does not identify a relevant time period. Without waiving its objections, the State Department provides the following response, which provides information about offices and individuals who had management responsibility for records management of Secretary Clinton’s and Huma Abedin’s documents between January 21, 2009 (the date Secretary Clinton took office) and February 19, 2016 (the date on which the Department filed its final search declaration in this matter).

The Executive Secretariat (“S/ES”) is responsible for records management of documents for Department principals as well as retrieval of archived documents upon request. 1 FAM 022.2-2(2). Within S/ES-S, until January 21, 2013, the Office of Correspondence and Records (“S/ES-CR”) had day-to-day responsibility for records management. *See* 1 FAM 022.2-3 (August 6, 2001). During former Secretary Clinton and Ms. Abedin’s tenures, the Director of S/ES-CR was Clarence Finney. Effective January 21, 2013, this office was merged with another Executive Secretariat office to form the Executive Secretariat Staff (“S/ES-S”). Clarence Finney has held the position of Deputy Director of S/ES-S and head of the Correspondence, Records, and Staffing Division from that time to the present. The Directors of S/ES-S since the time of the merger have been Paul Horowitz (January 2013 – March 2014), MaryKay Carlson (March 2014 – November 2014), Mary Katherine Stana (December 2014 – July 2015) and Karin Lang (July 2015 to the present).

INTERROGATORY NO. 3:

Who was responsible for responding to Plaintiff’s FOIA request from the date of submission to the present?

Response: The State Department objects to the term “responsible” as vague and overbroad. Without waiving its objections, the State Department provides the following response, which provides information about offices and individuals who had management responsibility for responding to Plaintiff’s FOIA request from May 21, 2013 (the date of the Plaintiff’s FOIA request) to February 19, 2016 (the date on which the Department filed its final search declaration in this matter).

The State Department incorporates its response to Interrogatory No. 1 by reference.

The Director of the Department's Office of Information Programs and Services ("IPS") is responsible for responding to requests for access to information under the FOIA, including Plaintiff's FOIA request. 22 C.F.R. 171.11. The IPS Directors during the period from the date of submission of Plaintiff's FOIA request to the present were: Sheryl Walter (December 2011 – March 2014); and John Hackett (Acting Director: March 2014 – June 2015; Director: June 2015 – March 2016). Within IPS, the Statutory Compliance and Research Division administers the Department's statutory responsibilities in providing public access to information under the FOIA, including through coordinating with regional and functional bureaus to respond to public requests for records. 1 FAM 214.2-3. At the time Plaintiff's FOIA request was submitted to the Department in May 2013 until the time it entered litigation in September 2013, the Statutory Compliance and Research Division was responsible for responding to Plaintiff's FOIA request. The Statutory Compliance and Research Division Chief from May 2013 through September 2013 was Patrick Scholl. At the time Plaintiff's FOIA request entered litigation in September 2013, the Litigation and Appeals Branch within IPS's Programs and Policies Division was responsible for responding to the request. The Programs and Policies Division Chief during the period of September 2013 to February 19, 2016, was Karen Finnegan Meyers. The Branch Chief responsible for the Litigation and Appeals Branch during the period of September 2013 to February 19, 2016, was Susan Weetman.

INTERROGATORY NO. 4:

Which State Department officials and employees had and/or used an account on the clintonemail.com system to conduct official government business?

Response: State objects to this interrogatory on the grounds that it has never possessed or controlled clintonemail.com, does not now possess or control clintonemail.com, and thus has no

method of identifying which State Department officials and employees had and/or used an account on clintonemail.com to conduct official government business.

Subject to the foregoing objection, State is aware that Secretary Clinton and Huma Abedin had such accounts. *See* Clinton Declaration (Aug. 8, 2015) (ECF No. 22-1).

As to the interrogatories, see Attachment A.

As to the objections:

Dated: May 25, 2016

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

MARCIA BERMAN
Assistant Director

/s/ Steven A. Myers
CAROLINE LEWIS WOLVERTON (DC 496433)
Senior Trial Counsel
STEVEN A. MYERS (NY 4823043)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Tel.: (202) 305-8648
Fax: (202) 616-8460
Email: steven.a.myers@usdoj.gov

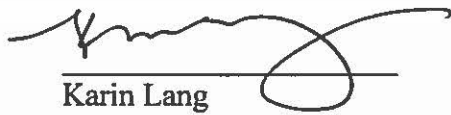
Attorneys for Defendant

ATTACHMENT A

VERIFICATION

I, Karin Lang, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the interrogatory answers contained in Defendant's Responses and Objections to Plaintiff's Interrogatories are true and correct to the best of my knowledge, and upon information and belief.

Dated: May 25, 2016

A handwritten signature in black ink, appearing to read 'Karin Lang', is written over a horizontal line.

Karin Lang
Director of the Executive Secretariat Staff
U.S. Department of State

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2016, I served the foregoing Responses and Objections to Plaintiff's Interrogatories by electronic mail on the following:

Michael Bekesha
Paul J. Orfanedes
Ramona Cotca
James Peterson
JUDICIAL WATCH, INC.
425 Third Street, SW
Suite 800
Washington, DC 20024
mbekesha@judicialwatch.org
porfanedes@judicialwatch.org
rcotca@judicialwatch.org
jpeterson@judicialwatch.org

/s/Steven A. Myers
STEVEN A. MYERS

Exhibit 2

A

D6

From: Lee, Purcell N
Sent: Tuesday, March 17, 2009 1:35 PM
To: Waggoner, Kevin L; Bentel, John A; Scott, Andrew C
Cc: Duncan, Bruce E
Subject: Secretary Residential Installation Hotwash
Attachments: Secretary Residential Installation Hotwash.docx

RELEASE IN PART
D6

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

Attached is the agenda/talking points for the hot wash.

Secretary Residential Installation Hotwash

RELEASE IN FULL

1. Equipment location:

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

- a. Unclassified Partner System:
 - i. Server: Basement Telephone Closet
 - ii. Telephone Set: Various rooms
- b. Classified Fax:
 - i. STE/Secure Fax: Third Floor
- c. Classified Red Switch: Third Floor

2. Status of Installation:

- a. Unclassified Partner Telephone System: Completed.
- b. Classified STE/Fax: Completed
- c. Classified Red Switch: Completed
- d. Unclassified Ops Drop: Verizon is still working to finalize path.
- e. CMS Classified Video: Declined
- f. CMS Classified Voice: Declined

3. Issues:

- a. T1 Telephone Services were not available upon arrival
- b. Analog lines (2) for the Partner system was not ordered.
- c. Red Switch Technicians arrived 2 days later than scheduled.
- d. SDS Data Cable was left in Washington
- e. Former President's wireless headset was disconnected
- f. Secretary Clinton's headset noise cancelling was not selected
- g. Speed Dial for Secretary Clinton Unclassified telephone was not working properly.
- h. Secretary's Clinton's business lines were not set up in a "Hunt Group"

B

From: H <HDR22@clintonemail.com>
Sent: Saturday, November 13, 2010 1:40 PM
To: Huma Abedin <Huma@clintonemail.com>
Subject: Re:

RELEASE IN FULL

Let's get separate address or device but I don't want any risk of the personal being accessible.

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

Also, I didn't get an ops email, only the Jake one. I'm forwarding my response to Dan on Kyi.

— Original Message —

From: Huma Abedin
To: H
Sent: Sat Nov 13 13:21:53 2010
Subject: Re:

We should talk about putting you on state email or releasing your email address to the department so you are not going to spam. Its not the phone message system, its the device delay.

— Original Message —

From: H
To: Huma Abedin
Sent: Sat Nov 13 13:04:47 2010
Subject: Re:

I emailed back yes but ops told me they didn't hear from you so didn't make call which I just ordered them to do. Also Jake said hed been trying to reach me and ops said they had called you about that too. This is not a good system.

— Original Message —

From: Huma Abedin
To: H
Sent: Sat Nov 13 12:28:17 2010
Subject: RE:

Kouchner can do 12:45
ok?

HA 09/01/2015

C

RELEASE IN FULL

From: Hanley, Monica R
To: Abigail Hanna
Subject: Pw: S berry
Date: Tuesday, August 30, 2011 4:19:15 PM

SSHRC@state.gov

REVIEW AUTHORITY: Archie Bolster,
Senior Reviewer

----- Original Message -----

From: Bentel, John A
Sent: Tuesday, August 30, 2011 04:15 PM
To: Hanley, Monica R
Subject: RE: S berry

Monica: We actually have an account previously set up: SSHRC@state.gov. There are some old emails but none since Jan '11 -- we could get rid of them. You should be aware that any email would go through the Department's infrastructure and subject to FOIA searches.

Let me know if any questions and what you would like us to do.

Thanks!
John

SBU
This email is UNCLASSIFIED

----- Original Message -----

From: Hanley, Monica R
Sent: Tuesday, August 30, 2011 3:59 PM
To: Bentel, John A
Subject: S berry

Do you know what her email address would be on a state dept berry?

D

From: Justin G Cooper
To: Aberlin Huma
Date: Saturday, October 29, 2011 11:52:17 PM

RELEASE IN FULL

Fyi clintonemail.com is down due to an outage with our ISP.
Our actual systems are up.
If it looks to be long term ie past tomorrow I will reroute the mail.
U or oscar can tell hrc

**REVIEW AUTHORITY: Archie Bolster,
Senior Reviewer**

From: Justin Cooper
To: Abedin, Huma
Cc: Oscar Flores; Jon Davidson
Subject: Re: S mentioned BB not working
Date: Thursday, December 29, 2011 11:46:03 AM

RELEASE IN FULL

No issues on our end.
As u know parts of the house there have bad service.
Adding jd and oscar who are there to see if they are having trouble

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

From: Abedin, Huma [mailto:AbedinH@state.gov]
Sent: Thursday, December 29, 2011 11:42 AM
To: Justin Cooper
Subject: Fw: S mentioned BB not working

Are we having problems with clintonemail? Not usually otherwise an issue in punta cana

From: Meehan, Bernadette M
Sent: Thursday, December 29, 2011 11:06 AM
To: Mills, Cheryl D; Sullivan, Jacob J; Abedin, Huma; Hanley, Monica R
Cc: Wells, Alice G; S_SpecialAssistants
Subject: S mentioned BB not working

On the call with Blair, S mentioned her BB is down and she is not getting emails. Not sure if this is a battery issue or something wrong with the BB, but FYI.

From: Justin Cooper
To: Mills, Cheryl D; [redacted]; Abedin, Huma
Subject: Re: Warning: could not send message for past 4 hours
Date: Saturday, February 27, 2010 5:53:42 PM

D6

Ur funny. We are on the same server.

RELEASE IN
PART D7,D6

----- Original Message -----

From: Mills, Cheryl D <MillsCD@state.gov>
To: jcooper [redacted] <jcooper [redacted]>; Abedin, Huma <AbedinH@state.gov>
Sent: Sat Feb 27 08:00:15 2010
Subject: Fw: Warning: could not send message for past 4 hours

D6

Fyi - hrc email coming back - Is server okay?

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

----- Original Message -----

From: postmaster <postmaster@state.gov>
To: Mills, Cheryl D
Sent: Sat Feb 27 03:05:06 2010
Subject: Warning: could not send message for past 4 hours

This is a MIME-encapsulated message

--o1R856Uc010583.1267257906/e_server [redacted]
\${fe_shelo}state.gov
\${daemon_flags}
\${fe_client} [redacted]
\${if_addr} [redacted]

D7

** THIS IS A WARNING MESSAGE ONLY **
** YOU DO NOT NEED TO RESEND YOUR MESSAGE **

D7
D7

The original message was received at Sat, 27 Feb 2010 03:41:40 GMT
from:
<MillsCD@state.gov>

----- Transcript of session follows -----

451 4.4.1 reply: read error from mail.clintonemail.com.
<hdr22@clintonemail.com>... Deferred: Connection timed out with mail.clintonemail.com.
Warning: message still undelivered after 4 hours
Will keep trying until message is 1 day old

--o1R856Uc010583.1267257906/e_server [redacted]
\${fe_shelo}state.gov
\${daemon_flags}
\${fe_client} [redacted]
\${if_addr} [redacted]
Content-Type: message/delivery-status

D7

Reporting-MTA: dns; e_server [redacted]
\${fe_shelo}state.gov
\${daemon_flags}
\${fe_client} [redacted]
\${if_addr} [redacted]
\${fe_chelo} [redacted]
\${auth_authen}

D7
D7

D7

D7
D7
D7

\$(fe_mta)sendmail
S<MillsCD@state.gov>
MDeferred: Connection timed out with mail.clintonemail.com.
rRFC822; hdr22@clintonemail.com
RFPD:<hdr22@clintonemail.com>
H?P?Return-Path: <a>
H??Received: from [redacted]
by vance2.state.gov with ESMTP id o1R3fe0R011956
for <hdr22@clintonemail.com>; Fri, 26 Feb 2010 22:41:40 -0500
H??Received: from [redacted]
[redacted] with Microsoft SMTPSVC(6.0.3790.3959);
Fri, 26 Feb 2010 23:13:22 -0500
H??Received: from [redacted] by [redacted] with
Microsoft SMT
Arrival-Date: Sat, 27 Feb 2010 03:41:40 GMT

Final-Recipient: RFC822; hdr22@clintonemail.com
Action: delayed
Status: 4.4.2
Last-Attempt-Date: Sat, 27 Feb 2010 08:05:06 GMT
Will-Retry-Until: Sun, 28 Feb 2010 03:41:40 GMT

--o1R856Uc010583.1267257906/e_server [redacted]
\$(fe_shelo)state.gov
\$(daemon_flags)
\$(fe_client) [redacted]
\$(if_addr) [redacted]
Content-Type: message/rfc822

Return-Path: <MillsCD@state.gov>
Received: from [redacted]
by vance2.state.gov with ESMTP id o1R3fe0R011956
for <hdr22@clintonemail.com>; Fri, 26 Feb 2010 22:41:40 -0500
Received: from [redacted]
with Microsoft SMTPSVC(6.0.3790.3959);
Fri, 26 Feb 2010 23:13:22 -0500
Received: from [redacted] with
Microsoft SMTPSVC(6.0.3790.3959);
Fri, 26 Feb 2010 23:13:21 -0500
Received: from [redacted] with Microsoft
SMTPSVC(6.0.3790.2499);
Fri, 26 Feb 2010 23:13:20 -0500
X-MimeOLE: Produced By Microsoft Exchange V6.5
Content-class: urn:content-classes:message
MIME-Version: 1.0
Content-Type: multipart/mixed;
boundary="-----=_NextPart_001_01CAB763.16C28431"
Subject: Fw: Warning: could not send message for past 4 hours (RESENT BY CDM)
Date: Fri, 26 Feb 2010 23:12:34 -0500
Message-ID: <24BE1118E6623A44970C232D0B0C26B505D78F586 [redacted]>
X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Warning: could not send message for past 4 hours
Thread-Index: Acq3XMAt8nagXVEISJGgsxcS40ladAABIYI7
From: "Mills, Cheryl D" <MillsCD@state.gov>
To: <hdr22@clintonemail.com>
X-OriginalArrivalTime: 27 Feb 2010 04:13:20.0944 (UTC) FILETIME=[32718B00:01CAB763]
X-TM-AS-Product-Ver: SMEX-8.0.0.4125-6.000.1038-17216.006
X-TM-AS-Result: No--11.737700-0.000000-31
X-TM-AS-User-Approved-Sender: Yes

D7

D7

D7

D7

D7

D7

D7

D7

D7

D7

D7

X-MS-Has-Attach:
X-MS-TNEF-Correlator:
Thread-Topic: Thank you.
Thread-Index: Acq30FWxlaMz+kTNQw66t8pMw0zzawAAURs
From: "Mills, Cheryl D" <MillsCD@state.gov>
To: <hdr22@clintonemail.com>

RnlpDQoNCi9fX19fX19fX19fX19fX19fX19fX19fX19fDQoNCkZyb206IEld2lzlCB5
ZXRhIEpvIA0KVg86IE1pbGxzLCB0aGVyeWwRCANQibnQ6IEZyaSBGZWJgMjYgMTg6MDU6MTcg
MjAxMA0KU3ViamVjdDogVGhhbmsgeW91UANCg0KDQoNCkNoZXJ5bDoNCg0KIA0KDQpJlHJY2Vp
dmVklGEgY2FsbCBmcm9tIFBhdCB0aGF0IHhhaWQgYWxsIHdvdWxklGJIHRha2VuIGNhcmUgb2Yg
dG9kYXkuICBUaGFua3Mgc28gbXVjaC4gIEldOKAmXMgdGFsayBuZXh0IHdlZWsuDQoNCiANCg0K
UmV0YSANCg0K

-----=_NextPart_001_01CAB763.16C28431--

--o1R856Uc010583.1267257906/e_server}[REDACTED]
\${fe_shelo}state.gov
\${daemon_flags}
\${fe_client}[REDACTED]
\${if_addr}[REDACTED]

D7

--o1R856Uc010583.1267257906/e_server}[REDACTED]
\${fe_shelo}state.gov
\${daemon_flags}
\${fe_client}[REDACTED]
\${if_addr}[REDACTED]

D7
D7

D7

D7
D7

From: Justin Cooper
To: Abedin, Huma
Subject: Re: Is Clinton email down?
Date: Wednesday, October 10, 2012 10:55:34 AM

RELEASE IN FULL

it was
back up now

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

On Oct 10, 2012, at 8:38 AM, Abedin, Huma wrote:

>

D6

From: Mensah, Ebenezer T
Sent: Wednesday, December 22, 2010 2:30 PM
To: Lawrence, Thomas W; Jammes, Trey; Gazlay, Jay E
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Jacks, Yvette R
Subject: RE: Meeting with Huma

RELEASE IN PART
D6, D7

Thank you Thomas and we also appreciate all the assistance and team coordination on this matter as well. I will continue to work with your team so long as this and all other ScanMail issues persist. So, please do not hesitate to call or keep me in the loop if there are any issues or concerns relating to ScanMail or have any questions. I have a couple of meetings scheduled with both VIRT/Trend Micro support on this matter and will continue to highlight the continuous problem areas as well as user frustrations going forward. Again, thanks for all the local assistance on this matter.

Ebenezer Mensah
Exchange Systems Engineer
IRM/OPS/MSO/EML
SkyePoint Decisions Support Contractor
(202) 634-0278
Mensahet@State.Gov

REVIEW
AUTHORITY:
Archie Bolster,
Senior Reviewer

From: Lawrence, Thomas W
Sent: Wednesday, December 22, 2010 12:22 PM
To: Mensah, Ebenezer T; Jammes, Trey; Gazlay, Jay E
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Jacks, Yvette R
Subject: RE: Meeting with Huma

EB,

This was my call. Because I don't have all the facts to what exactly is going on with SMEX, I decided to be methodical. This is due to the fact both content filtering and anti-virus checking on that BH has blocked malicious content in the recent past. If we find the changes made are not affective, our next steps will be:

- A. Disable Content Filtering and restart SMTP services
- B. Verify - if problem continues....
- C. Disable AV Filtering and restart SMTP services
- D. Verify - if problem continues....
- E. Escalate

We will continue to communicate with you over the next couple of days as I have asked of you.

Again, thank you for your assistance. While we are frustrated with the situation, please don't misunderstand that is directed towards you. We are appreciative of all your efforts.
tom

From: Mensah, Ebenezer T
Sent: Wednesday, December 22, 2010 11:12 AM
To: Jammes, Trey; Gazlay, Jay E; Lawrence, Thomas W
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Jacks, Yvette R
Subject: RE: Meeting with Huma

Jay,

It's correct that Anti-span need to be disabled per our recommendation but that was before we started receiving complaints for these isolated issue with categorizer problems and through workaround, we discover that adding these two filters on our BHs eliminate that problem. And we've already brought it to VIRT and Trend Micro attention. We continue to work with them daily on these issue and believe they're working through those issues in the version 10 (Pilot) which seem to experience similar issue as Trey already elaborated on (also these new settings are not in original documentation).

So, in order to eliminate the categorizer issue which seem to be our primary concern, then you will want to disable the two additional filters as recommended and we will let you know if anything changes in the near future or else you will not get the user/customer satisfactory result on that very issue if those filters are still enabled. Thanks.

Attach is a copy of the installation guide for ScanMail 8.

Ebenezer Mensah
Exchange Systems Engineer
IRM/OPS/MO/EML
SkyePoint Decisions Support Contractor
(202) 634-0278
Mensahet@State.Gov

From: Jammes, Trey
Sent: Wednesday, December 22, 2010 9:47 AM
To: Gazlay, Jay E; Lawrence, Thomas W; Mensah, Ebenezer T
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Jacks, Yvette R
Subject: RE: Meeting with Huma

I am not confident that Trend will provide an update for SMEX 8. That is two revs behind their current offering, SMEX 10, and they are pushing us to go to that (currently in pilot), and they have never not yet been able to deliver a fool-proof solution for an issue that has been around for at least 2 years. Unfortunately, we have seen similar problems with SMEX 10. EB, correct me if I'm wrong though, I don't think that we have seen the problem with SMEX 10 when running without the anti-SPAM piece.

Tom, what type of update are you looking for by 1500? I do think that turning off anti-SPAM is a resolution if that is what was causing the problem. Did the SMTP service ever get restarted? I don't think I got an answer on that.

Trey Jammes

From: Gazlay, Jay E
Sent: Wednesday, December 22, 2010 9:35 AM
To: Lawrence, Thomas W; Mensah, Ebenezer T; Jammes, Trey
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Jacks, Yvette R
Subject: RE: Meeting with Huma

As per my instructions from Kenny, last night at 7:30 I turned off "Anti-Spam" on our bridgeheads, [] and []. If it is really necessary to to the other settings, let's setup a conference call later today.

D7

TREND MICRO™ ScanMail™ for Microsoft™ Exchange		
Current server: SE55ML32U	Real-time monitor	Server Management
Summary	Anti-Spam	
Virus Scan	<input type="checkbox"/> Enable Anti-Spam	
Attachment Blocking	Target Action	
Content Filtering	Spam Catch Rate	
Anti-Spam	Spam detection level: medium	
Manual Scan	<input checked="" type="checkbox"/> Detect Phishing	
Scheduled Scan	Approved Senders	
Updates	Email from addresses or domain names in this list will not be treated as Spam:	
Alerts	(for example: domain.com, username@domain.com, or @domain.com)	
Reports	<input type="text" value="state.gov"/> <input type="button" value="Add"/> <input type="button" value="Remove"/>	
Logs		
Quarantine		
Administration		

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile:
In accordance with E.O. 13526 this message is not classified.

D6

From: Lawrence, Thomas W
Sent: Wednesday, December 22, 2010 8:34 AM
To: Mensah, Ebenezer T; Jammes, Trey
Cc: Wilson, Nancy L; LaVolpe, Kenneth E; Gazlay, Jay E
Subject: RE: Meeting with Huma

Thank you for all your efforts. We are grateful for your persistence on this matter and we are ready to assist in any manner.

To officially indicate the obvious from S/ES-IRM, we view this as a Band-Aid and fear it's not 100% fully effective. We are eager for Trend Micro to fully resolve, quickly. I want an update on the status by 1500 today, even if it's nothing changed.

Trey do you agree with my position? If not, please simply contact me direct. Thanks

tom

From: Mensah, Ebenezer T
Sent: Wednesday, December 22, 2010 8:10 AM
To: Lawrence, Thomas W; Jammes, Trey; LaVolpe, Kenneth E; Gazlay, Jay E
Cc: Wilson, Nancy L
Subject: RE: Meeting with Huma

The anti-phishing filters settings should be left as it is now, it should be the 3 filters on the instruction I sent Jay and his team yesterday. Just so you know, we're still working with Trend Micro on some of these filter related issues and will update you if any changes are necessary. Thanks.

Ebenezer Mensah

Exchange Systems Engineer
IRM/OPS/MO/EML
SkyePoint Decisions Support Contractor
(202) 634-0278
Mensahet@State.Gov

From: Lawrence, Thomas W
Sent: Tuesday, December 21, 2010 4:01 PM
To: Jammes, Trey; LaVolpe, Kenneth E; Gazlay, Jay E; Mensah, Ebenezer T
Cc: Wilson, Nancy L
Subject: RE: Meeting with Huma

Thanks, we are discussing now. What about the anti-phishing filter? Same?

From: Jammes, Trey
Sent: Tuesday, December 21, 2010 2:39 PM
To: Lawrence, Thomas W; LaVolpe, Kenneth E; Gazlay, Jay E; Mensah, Ebenezer T
Cc: Wilson, Nancy L
Subject: RE: Meeting with Huma

Turning off the anti-spam filter on the server is recommended at least to verify that it resolves the problem (assuming this is recurring). Instructions were sent to Jay. It is also recommended to restart the SMTP service when the Categorizer is not processing messages properly.

Trey Jammes

From: Lawrence, Thomas W
Sent: Tuesday, December 21, 2010 1:36 PM
To: LaVolpe, Kenneth E; Gazlay, Jay E; Mensah, Ebenezer T
Cc: Wilson, Nancy L; Jammes, Trey
Subject: RE: Meeting with Huma

Huma is asking for an update. Do we have one?

From: LaVolpe, Kenneth E
Sent: Tuesday, December 21, 2010 10:01 AM
To: Gazlay, Jay E; Mensah, Ebenezer T
Cc: Wilson, Nancy L; Jammes, Trey; Lawrence, Thomas W
Subject: RE: Meeting with Huma

Just looping Trey and Tom into this.

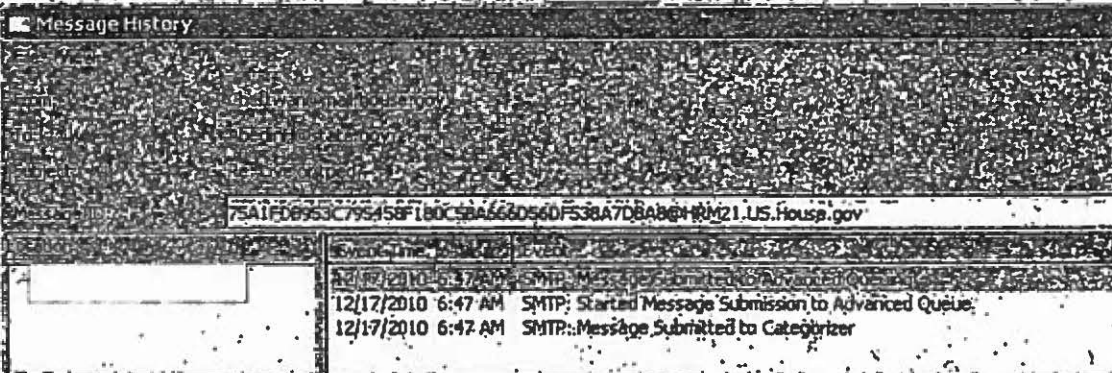
From: Gazlay, Jay E
Sent: Tuesday, December 21, 2010 9:56 AM
To: Mensah, Ebenezer T
Cc: LaVolpe, Kenneth E; Wilson, Nancy L
Subject: RE: Meeting with Huma

1. Version of ScanMail ?

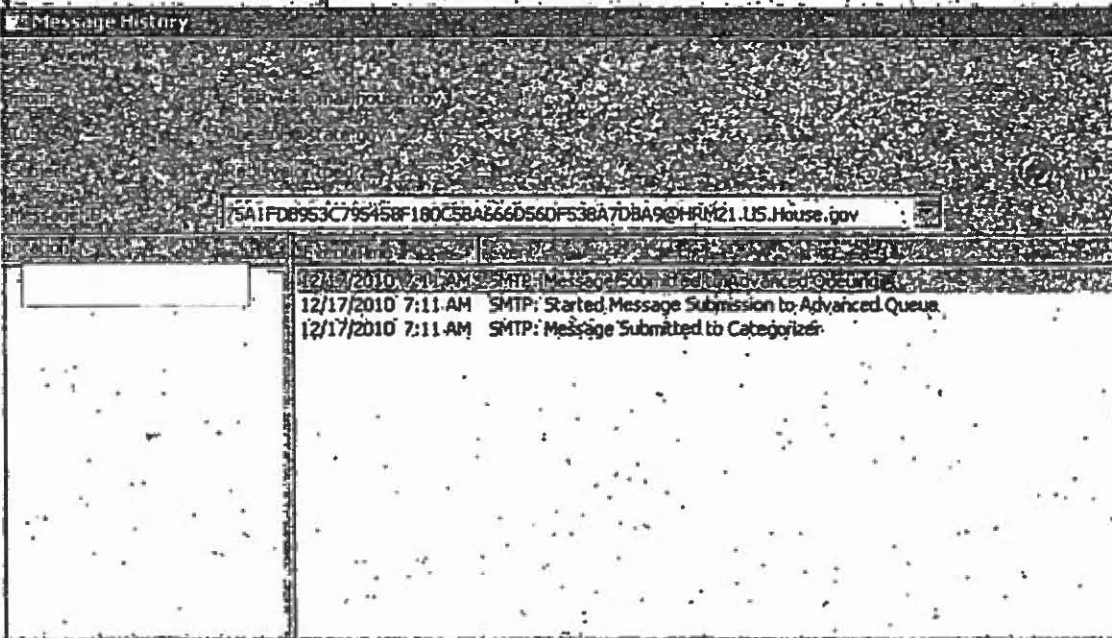
Component	Current Version
<input checked="" type="checkbox"/> Virus pattern	7.703.00
<input checked="" type="checkbox"/> Additional threat pattern	1.13.00
<input checked="" type="checkbox"/> IntelliTrap pattern	0.147.00
<input checked="" type="checkbox"/> Mail Filter exception pattern	0.613.00
<input checked="" type="checkbox"/> Scan engine	9.200.1012
<input checked="" type="checkbox"/> Spam pattern	17.832.003
<input checked="" type="checkbox"/> Spam engine	6.500.1024

2. Screenshot of message delivered to the categorizer on [redacted] as stated below?

D7



D7



D7

3. Search completed on 12/17/2010 7:11 AM.
- Which device or application were those failed delivery messages sent from (it doesn't seem to be Outlook sources but I may be wrong). It was sent from a blackberry.
 - Were there any attachment associated with any of these messages that were stripped off? Not that we are aware of.
 - Was there any reason I couldn't see the senders email address in the very message, instead it appears as letter "H". Any reason the address wasn't there? I don't know, the email address was H0R22@clintonemail.com.

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile: [REDACTED]
In accordance with E.O. 13526 this message is not classified.

D6

From: Mensah, Ebenezer T
Sent: Tuesday, December 21, 2010 8:29 AM
To: Gazlay, Jay E
Cc: LaVolpe, Kenneth E; Wilson, Nancy L
Subject: RE: Meeting with Huma

All I was saying was I didn't find a trace of any of the reported messages but more information may help. So, here are the specific questions that may help as well:

7. Version of ScanMail?
8. Screenshot of message delivered to the categorizer on [REDACTED] as stated below?
9. Which device or application were those failed delivery messages sent from (it doesn't seem to be Outlook sources but I may be wrong)?
10. Were there any attachment associated with any of these messages that were stripped off?
11. Was there any reason I couldn't see the senders email address in the very message, instead it appears as letter "H". Any reason the address wasn't there?

D7

Ebenezer Mensah
Exchange Systems Engineer
IRM/OPS/MO/EML
SkypePoint Decisions Support Contractor
(202) 634-0278
Mensahet@State.Gov

From: Gazlay, Jay E
Sent: Monday, December 20, 2010 4:14 PM
To: Mensah, Ebenezer T
Cc: LaVolpe, Kenneth E; Wilson, Nancy L
Subject: RE: Meeting with Huma

EB,

With so many questions in-line, I am worried that I might not properly cover each of them. Can you please provide a bullet-list of what information you need to be successful?

Regards,

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile: [REDACTED]
In accordance with E.O. 13526 this message is not classified.

D6

From: Mensah, Ebenezer T
Sent: Monday, December 20, 2010 2:52 PM
To: Gazlay, Jay E
Cc: LaVolpe, Kenneth E; Wilson, Nancy L
Subject: RE: Meeting with Huma

Jay,

I did use different scenario to track down some of the specific message in question, as presented routing between the sender and recipient (s), but I did not find or get any specific data to analyze the cause as well as determine if these messages actually came through our system or got stuck somewhere on it's transmission or if it did not hit any of DOS Bridgeheads at all. I did use multiple methods to track down messages through all and selected BHs to try and at least get something that seem to have been deliver into the databases where the recipient mailboxes are homed but none gave me anything concrete on the subject matter. However, I saw other messages that were sent from the same users that came through from same senders without problem.

This bring us to the point where we want to know "the differences" or what types of messages were delivered without problem and those that cannot be traced from the sender point of view and how these two different messages were sent in the first place (either BB, MAPI client, OWA or through other application or device). Also, let' remember certain attachment or message sizes over 30MB will be refuse delivery.

Lastly, I will like to at least get more information or screenshot of the messages that were stuck in the categorizer, I'm not sure why I did not find them or see those as well but if I could get more information on that I think that will help our process as well (It was resent at 7:11 am by sender to huma, received and also "submitted to Categorizer" on sessml32u).

At this point I'm not relating any of these to ScanMail yet until I get answers to some the questions as well as the version of ScanMail version running on your [redacted] and other SES Exchange BH servers. Thanks.

D7

Ebenezer Mensah
Exchange Systems Engineer
IRM/OPS/MSO/EML
SkyePoint Decisions Support Contractor
(202) 634-0278
Mensahet@State.Gov

From: Gazlay, Jay E
Sent: Monday, December 20, 2010 9:05 AM
To: Mensah, Ebenezer T
Cc: LaVolpe, Kenneth E; Wilson, Nancy L
Subject: FW: Meeting with Huma

Eb,

Can you please check on your side for any information regarding this message. Please do not forward the attachment to other IRM staff without checking with our Gov't first.

Thank you,

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile: [redacted]
In accordance with E.O. 13526 this message is not classified.

D6

From: Padillanb, Bryan M
Sent: Friday, December 17, 2010 4:56 PM
To: Gazlay, Jay E
Cc: Lawrence, Thomas W
Subject: RE: Meeting with Huma

(Here is the one from the 13th. I looked for the one on the 14th and could not find one with a blank subject. I did find one sent at that time to Iona and Huma with subject Friday which I can grab for you.)

-Bryan

From: Gazlay, Jay E
Sent: Friday, December 17, 2010 4:26 PM
To: ~~Pagliano, Bryan M~~
Cc: Lawrence, Thomas W
Subject: RE: Meeting with Huma

I was actually looking for a full copy of the message including the header information. That way I can provide it to our AV people for analysis.

Regards,

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile:
In accordance with E.O. 13526 this message is not classified.

D6

From: ~~Pagliano, Bryan M~~
Sent: Friday, December 17, 2010 4:25 PM
To: Gazlay, Jay E
Cc: Lawrence, Thomas W
Subject: RE: Meeting with Huma

So when you say "full header" you mean the SMTP transaction right? Only the recipient receives the header info after it's written from being passed from server to server to get to the recipient, believe?

~~Bryan~~

From: Gazlay, Jay E
Sent: Friday, December 17, 2010 4:20 PM
To: ~~Pagliano, Bryan M~~
Cc: Lawrence, Thomas W
Subject: RE: Meeting with Huma

Can you please check and provide full header information on the message from the 14th?

- 1 On 12/14/10, ~~hdm22@clintonemail.com~~ sent a message to ~~huma@clintonemail.com~~ and ~~Valmoroli@state.gov~~ at 10:03 pm. The subject line was blank. Huma received at Clinton address, but Donald did not receive on her state.gov account.

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile:
In accordance with E.O. 13526 this message is not classified.

D6

From: Pagliano, Bryan M
Sent: Friday, December 17, 2010 4:19 PM
To: Gazlay, Jay E

Cc: Lawrence, Thomas W
Subject: RE: Meeting with Huma

So, I am on the system now and looking at the logs.

I can send you the text of the log if you want, but that message was sent through vance.state.gov which replied that the recipients were okay [redacted] for both recipients, [redacted] at 12/13/2010 07:10:02

D7

While I am on, I can look up others messages

From: Gazlay, Jay E
Sent: Friday, December 17, 2010 1:36 PM
To: Pagliano, Bryan M
Subject: FW: Meeting with Huma

Jay E. Gazlay
Worldwide Information Network Systems
Office: 202.647.4525 | Mobile: [redacted]
In accordance with E.O. 13526 this message is not classified.

D6

From: LaVolpe, Kenneth E
Sent: Friday, December 17, 2010 12:04 PM
To: SES-IRM_Tech
Subject: Re: Meeting with Huma

Jay and Nancy could you look into this immediately. This should trump all other activities. You can also have a 1 day extension on heat tickets.

From: Almodovar, Cindy T
Sent: Friday, December 17, 2010 11:17 AM
To: SES-IRM_Tech
Cc: SES-IRM_FO-Mgt
Subject: Meeting with Huma

I met with Huma for about 30 minutes to go over mail issues.
She gave me some examples listed below, but also, things are inconsistent. But issue #1 is of an e-mail which was sent to her twice this morning, did get received on [redacted] but was not delivered. See details below.

D7

~~(I have a contact from the @Clintonemail site, his name is Bryan Pagliano and he actually now works for State, but he apparently set all of this up.)~~

P. Adriano, Bryan H.			
General		Organization	Phone/Fax
Name		First Name	Last Name
First:	Bryan	Initials:	HA
Last:	Adriano		
Display:	Adriano, Bryan H.	Alias:	AdrianoBH
Address:		Address:	Special Address:
American Red Cross Building		Company:	US Department of State
City:	Washington	Department:	Information Resource Management
State:	DC	Office:	SA-9 Room 1943083
Zip code:	20006	Assistant:	
Country/Region:	United States	Phone:	202-634-3481

Huma sent several tests from her clintonemail account to Lona and myself – they were received. But there are many messages and responses not received.

2. She sent a message this morning from her state.gov account to cheftwan@mail.house.gov.
 - Recipient responded, but she didn't get the response. I found that the response arrived and is on [redacted] as "submitted to Categorizer" at 6:47 this morning.
 - It was resent at 7:11 am by sender to huma, received and also "submitted to Categorizer" on [redacted]

D7

D7

3. On 12/13, hdr22@clintonemail.com sent a message to huma@clintonemail.com, sullivanj@state.gov and sterntd@state.gov at 7:09 am. The subject line was Kudos and Espinosa. Huma received the message at the Clinton address, but the State recipients did not receive.

4. On 12/14, hdr22@clintonemail.com sent a message to huma@clintonemail.com and Valmoroli@state.gov at 10:03 pm. The subject line was blank. Huma received at Clinton address, but Lona did not receive on her state.gov account.



Cindy Trodden Almodovar

S/ES Supervisory Systems Administrator
S/ES-IRM POEMS Help Desk
U.S. Department of State
Phone: 202-647-8328 | Fax: 202-647-8191

E

From: Justin Cooper
To: Abedin Huma
Date: Sunday, January 09, 2011 2:57:19 AM

RELEASE IN FULL

REVIEW
AUTHORITY:
Archie Bolster,
Senior Reviewer

I had to shut down the server
Someone was trying to hack us and while they did not get in I didnt want to let them have the chance
to.
I will restart it in the morning.

D6

[REDACTED]

From: Justin Cooper <Justin@presidentclinton.com>
Sent: Sunday, January 09, 2011 2:59 PM
To: Abedin, Huma; Doug Band
Subject: Re:

RELEASE IN
PART D6

Thanks. We were attacked again so I shut it down for a few min. It shld be working now

REVIEW AUTHORITY: Archie
Bolster, Senior Reviewer

----- Original Message -----

From: Abedin, Huma <AbedinH@state.gov>
To: Justin Cooper; Doug Band
Sent: Sun Jan 09 14:33:52.2011
Subject:

My clinton berry not working.
I got your email about varkey
I emailed him earlier about plans.
He only responded a few minutes ago saying they could come. Will close the loop.

From: Abedin, Huma
Sent: Monday, January 10, 2011 1:31 AM
To: Sullivan, Jacob J; Mills, Cheryl D
Subject: Don't email hrc anything sensitive. I can explain more in person.

RELEASE IN FULL

REVIEW AUTHORITY: Archie Bolster,
Senior Reviewer

Upon consideration of Plaintiff's Motion for Permission to Depose Hillary Clinton, Clarence Finney, and John Bentel and the entire record herein, it is hereby ORDERED that:

- SO ORDERED.**

The Hon. Emmet G. Sullivan, U.S.D.J.