

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

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

PLAINTIFF’S NOTICE OF REVISED DISCOVERY PROPOSAL

Plaintiff Judicial Watch, Inc., by counsel and pursuant to the Court’s December 21, 2016 Order, respectfully submits that discovery should proceed consistent with this revised discovery proposal. Pursuant to the Court’s Order and LCvR7(m), the parties conferred on several occasions, but were unable to reach agreement on a discovery proposal. Indeed, Defendant is unwilling to agree to any discovery at all in this action. Therefore, Plaintiff submits its discovery proposal separately from Defendant. A proposed order is also attached.

Plaintiff’s discovery proposal focuses on two main areas that were addressed by the Court’s March 29, 2016 Order granting Plaintiff’s motion for discovery, but were not covered by discovery subsequently undertaken in *Judicial Watch, Inc. v. U.S. Dep’t of State*, Case No. 13-1363 (EGS) (D. District of Columbia) (“Case No. 13-1363”). These areas are: (i) evidence of wrongdoing or bad faith with respect to State Department’s response to Plaintiff’s FOIA request for records related to the talking points provided to U.S. Ambassador Susan Rice following the September 11, 2012 Benghazi attack and (ii) potential remedies that may ensure a sufficient search for responsive records is undertaken. Potential remedies include an order requiring the

State Department to identify and recover federal records (*e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business) from other custodians or sources, including other agencies and third parties, and requiring the State Department to post these records online.¹ Plaintiff proposes the following written and oral discovery specifically tailored around these two issues:

Document Requests

1. All documents that concern or relate to the processing of any and all searches of the Office of the Secretary for emails relating to the September 11, 2012 Benghazi attack and its aftermath, including but not limited to:
 - a. searches for records for the Accountability Review Board;
 - b. searches in response to congressional inquiries (including requests from the House Committee on Oversight and Government Reform dated September 20, 2012, October 2, 2012, October 29, 2012, and November 1, 2012);
 - c. searches in preparation of Secretary Clinton's testimony before Congress on January 23, 2013; and
 - d. searches in response to FOIA requests, including but not limited to the FOIA request submitted by Plaintiff in this case.

Such documents would include the tasking, tracking and reporting records for such searches. Forms DS-1748 and any "search slips," "search tasker," "search details," shall also be considered responsive.

Plaintiff's FOIA request seeks records related to the September 11, 2012 attack on the U.S. Consulate and annex in Benghazi, Libya. The Office of the Secretary responded to multiple Congressional investigations and at least one, internal State Department investigation into the

¹ Under Secretary of State for Management Patrick F. Kennedy suggested this possible remedy during his September 8, 2016 testimony to the U.S. House of Representatives Oversight and Government Reform Committee, albeit only in reference to records returned by Secretary Clinton: "If anyone thinks that one of their [FOIA] inquiries did not get a full response, we have posted all of that material, all of the fifty-two thousand [pages], to our public FOIA website in a searchable form so that we can in effect be retroactively responsive to any earlier inquiries." (available at <https://www.c-span.org/video/?414934-1/state-department-officials-testify-foia-requests>.) Plaintiff's proposed, potential remedy would expand this same practice to records recovered from other custodians and sources.

attack. Document Request No. 1 seeks records about the State Department's document collection efforts in response to these investigations. The purpose of the document request is to determine whether, during the course of these efforts, the State Department discovered that Secretary Clinton and other high level officials within the agency had used unofficial email accounts to conduct official, State Department business, and, if so, when it made this discovery. The State Department was ordered to produce all non-exempt records responsive to Plaintiff's FOIA request by November 12, 2014, but did not acknowledge Secretary Clinton's exclusive use of an unofficial email account until forced to do so after the *New York Times* disclosed the existence of the account in early March, 2015. Therefore, the request is relevant to the State Department's knowledge and awareness when responding to Plaintiff's FOIA request that Secretary Clinton's emails were not being searched in response to the request. It also is relevant to the department's knowledge and awareness that emails in other high level officials' unofficial email accounts also were not being searched in response to Plaintiff's FOIA request. It will assist the Court in determining whether the State Department acted wrongfully or in bad faith. Moreover, these earlier document collection efforts were not the subject of discovery taken in Case No. 13-1363. The request was included in Plaintiff's initial discovery proposal submitted on May 16, 2016. (ECF No. 42-1).

2. All communications that concern or relate to the processing of all searches referenced in Document Request No. 1 above, including directions or guidance about how and where to conduct the searches, whether and how to search Secretary Clinton's email, Cheryl Mills' email, Huma Abedin's email and Jacob Sullivan's email, and issues, problems, or questions concerning the searches and/or search results.

The State Department has identified Secretary Clinton, Cheryl Mills, Huma Abedin and Jacob Sullivan as former officials likely to have emailed about the subject matter of Plaintiff's FOIA request. Document Request No. 2 is relevant for the same reasons Document Request No.

1, above, is relevant. Like Document Request No. 1, this request was included in Plaintiff's initial discovery proposal submitted on May 16, 2016. (ECF No. 42-1).

3. All records that concern or relate to the State Department's policies, practices, procedures and/or actions (or lack thereof) to secure, inventory, and/or account for all records, including emails of Secretary Clinton, Cheryl Mills, Huma Abedin, Jacob Sullivan and staff within the Office of the Secretary prior to their termination of employment with the State Department and afterwards.

On or about December 4, 2014, Secretary Clinton returned over 50,000 pages of federal records she took with her when she left the State Department in early 2013. The State Department plainly was aware of Secretary Clinton's email practices at least as early as the summer of 2014 and, in October 2014, sent the secretary a letter requesting she return any federal records. On September 15, 2014, however, the Court ordered Defendant, consistent with Defendant's own recommendation, to produce all non-exempt, responsive records by November 12, 2014 and provide a *Vaughn* Index of allegedly exempt records by December 5, 2014. Defendant did not inform the Court at the time that it was in the process of collecting Secretary Clinton's work-related emails, which were potentially responsive to Plaintiff's request.

During the summer of 2015, Cheryl Mills, Huma Abedin and Jacob Sullivan also returned thousands of emails that related to their work for the State Department and which were potentially responsive to Plaintiff's request. To date, Defendant has not searched all records returned by Cheryl Mills, Huma Abedin or Jacob Sullivan.

Like Document Requests Nos. 1 and 2, above, the State Department's awareness of these document collections during the pendency of Plaintiff's FOIA request is relevant to determine wrongdoing or bad faith. As with Document Requests Nos. 1 and 2, above, Document Request No. 3 was included in Plaintiff's May 16, 2016 discovery proposal. (ECF No. 42-1).

4. Plaintiff requests copies of the attached records with the Exemption 5 redactions removed, attached hereto as Exhibit 1. The attached records were obtained by Plaintiff in an unrelated FOIA lawsuit against the State Department for records concerning the processing of a FOIA request submitted by CREW (Citizens for Responsibility and Ethics in Washington) on December 6, 2012 seeking records concerning Secretary Clinton's email account. *Judicial Watch, Inc. v. U.S. Dep't of State* (RDM) (D. D.C.) (Case No. 16-574).

The CREW request, made on December 6, 2012, specifically sought records "sufficient to show the number of email accounts of, or associated with, Secretary Hillary Rodham Clinton, and the extent to which those email accounts are identifiable as those of or associated with Secretary Clinton." The State Department subsequently advised CREW that it had no records responsive to its request, but that assertion is plainly incorrect. *See* Ex. 1, Doc. Nos. C06104785 and C06104322. Plaintiff later served a FOIA request on the State Department for records regarding the agency's processing of and response to the CREW request. The State Department produced the attached, heavily-redacted records to Plaintiff on August 29, 2016 and October 28, 2016. The emails appear to show inquiries and discussions in 2013 regarding Secretary Clinton's email usage and accounts. Plaintiff seeks unredacted copies of these records because, like Document Request Nos. 1-3, they may shed light on when the State Department discovered that Secretary Clinton used an unofficial email account to conduct official State Department business, and, accordingly, whether there was wrongdoing or bad faith.

The records are emails exchanged by State Department officials about the agency's processing and response to the CREW request:

- In a January 10, 2013 email from Sheryl L. Water (Director of the Office of Information Programs Services) to Heather Samuelson (in the White House Liaison Office for the State Department) Walter asked Samuelson, regarding the CREW request, "did you ever get any intel re ... Do you have any concerns about that approach?" The remainder of the text has

been redacted under Exemption 5. Ex 1, Doc. Nos. C06104795, C06104864 and C06071648. According to a report published by the State Department's Office of Inspector General in January 2016, Cheryl Mills also was informed of the CREW request at the time and asked for follow-up. *See* Department of State Office of Inspector General Rpt. Jan 2016, pg. 15, posted on January 7, 2016 and available at <https://oig.state.gov/system/files/esp-16-01.pdf> (accessed January 10, 2017). The name of the individual with whom Samuelson followed up also has been redacted from the email under Exemption 5. Ex. 1, Doc. No. C06104864. It appears that Samuelson tracked the CREW request for the remainder of her employment at the State Department. *Id.*

- On April 24, 2013, Gene Smilanksy, in the Office of the Legal Advisor, wrote to Brett Gittleston to "follow up about the [CREW] request for documents pertaining to any email accounts associated with then Secretary Clinton." Doc. No. C06105118. Again, the relevant text has been redacted under Exemption 5. *Id.*

- In an August 7, 2013 email from Geoffrey Hermensman, a branch chief in the State Department's Office of Information Programs and Services, to Walter, Karen Finnegan, John Hackett, and other State Department officials, Hermensman informed these officials that a database search identified "17 FOIA cases that contain Clinton in the subject line and can be further construed as requests for correspondence between the Secretary and other individuals and/or organizations. Of these, four specifically mention Emails or Email accounts." Ex. 1, Doc. No. C006105353. This discussion appears to have continued through August 2014 between Smilanksy, James Bair (Office of the Legal Advisor), and Clarence Finney (Deputy Director for Executive Secretariat Staff). Again, however, the relevant text has been redacted under Exemption 5. Ex. 1, Doc. No. C06104375.

The deliberative process privilege “rests on a policy of affording reasonable security to the decision making process within a government agency,” however, the “privilege is a ‘qualified one,’ ...and ‘is not absolute.’” *Texaco P.R., Inc. v. Dep’t of Consumer Affairs*, 60 F.3d 867 (First Cir. 1995), citing *First Eastern Corp. v. Mainwaring*, 21 F.3d 465, 468 n. 5 (D.C. Cir. 1994). Thus, ““where documents sought may shed light on alleged government malfeasance,’ the privilege is routinely denied.” *Id.*, citing *In re Franklin Nat’l Bank Sec. Litig.*, 478 F. Supp. 577, 582 (E.D.N.Y 1979). The redacted portions of the records produced in response to Plaintiff’s request about the proceeding of the CREW request may shed light on government malfeasance. Accordingly, the Court should order the State Department to produce unredacted copies of these same emails in discovery in this case. Because these emails were not produced to Plaintiff until August 29, 2016 and October 28, 2016, they were not available to Plaintiff when it submitted its initial discovery proposal on May 16, 2016. *Id.* at ECF No. 12; Ex. 1. Therefore, Document Request No. 4 was not included in Plaintiff’s initial discovery proposal. As such, they were also not available to Plaintiff while it was conducting discovery in Case No. 13-1363 and Plaintiff did not have an opportunity to ask questions about these records.

Depositions

1. 30(b)(6) witness(es) to testify about:
 - a. the searches referenced in Document Request Nos. 1 and 2 above;
 - b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and
 - c. the processing of the FOIA requests referenced in the emails attached hereto as Exhibit 1 and discussed in Plaintiff’s Document Request No. 4 above, including but not limited to the processing of the CREW FOIA request, the other requests discussed therein from 2012 through 2014 and Plaintiff’s FOIA request at issue in this case.

2. Cheryl Mills to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. the processing of the FOIA requests referenced in Document Request No. 4 above;
- d. Mills' subsequent search of her non-state.gov email account(s) for federal records and the return of those records to the State Department in or about 2015. (Defendant has not yet searched the records returned by Mills to determine whether any of those records are responsive to Plaintiff's FOIA request.);
- e. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton and/or Mills may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.); and
- f. Mills' discussion with Bryan Pagliano in 2009 and 2010 about concerns raised internally at the State Department regarding Secretary Clinton's email practices and "federal records retention issues" regarding those practices.

Regarding subparagraph 2(f), above, when Mills was deposed on May 27, 2016 in Case No. 13-1363, she was asked about internal, State Department concerns regarding the secretary's email practices, but testified that she could not recall any such discussions or concerns being raised. On or about September 23, 2016, the FBI released its notes of interviews conducted during the course of its investigation. According to the FBI's interview notes of State Department technology specialist Bryan Pagliano, who maintained Secretary Clinton's unofficial email server, Pagliano raised the issue with Mills, who responded by telling Pagliano that former Secretary of State Colin Powell had used private email as well. Ex. 2 (FBI Notes of December 22, 2015 Interview of Bryan Pagliano at p. 4). Because the FBI 302 interview notes of Pagliano

were not available to Plaintiff when it deposed Mills, Plaintiff did not have the opportunity to ask her about these notes. Plaintiff also deposed Pagliano in Case No. 13-1363, but Pagliano asserted his 5th Amendment right against self-incrimination in response to every question. Re-deposing Mills in this case would not be duplicative and would only seek to complete the record and discover facts relevant to this case. Plaintiff requested Mills' deposition in its May 16, 2016 discovery proposal, but has expanded the subject matter of the deposition inquiry as explained in subsection (f) above and in Document Request No. 4.

3. Jacob Sullivan to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. Sullivan's use of non-state.gov email account(s) to conduct official, State Department, business and the subsequent "private" search of his non-state.gov email account(s) for federal records and the return of those records to the State Department in or about 2015 (Defendant has not yet searched the records returned by Sullivan to determine whether those records are responsive to Plaintiff's FOIA request.); and
- d. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton and/or Sullivan may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

Jacob Sullivan was Secretary Clinton's Deputy Chief of Staff and Director of Policy Planning during her tenure. As with Mills' deposition, Plaintiff requested Sullivan's deposition in its May 16, 2016 proposal.

4. Secretary Hillary Rodham Clinton to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above; and

- b. identification of individuals (whether State Department officials, other government officials, or third-parties, including but not limited to Sidney Blumenthal) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

Secretary Clinton was served with written interrogatories in Case No. 13-1363, and she served responses on October 13, 2016. A motion to compel further responses to certain interrogatories is pending. The topics on which Plaintiff seeks to depose Secretary Clinton in this case are specifically crafted to avoid overlap with the questions posed to Secretary Clinton in Case No. 13-1363 and are narrowly tailored to address the issues of wrongdoing and possible remedies in this case. *See Landmark Legal Found. v. Env'tl. Prot. 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). Secretary Clinton was included among the original deponents identified in Plaintiff's May 16, 2016 discovery proposal, but Plaintiff has removed the secretary's use of the "clintonemail.com" email account for government business as a topic for questioning, as that subject was covered in the discovery taken in Case No. 13-1363.

5. Heather Samuelson to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached hereto as part of Exhibit 1.

During Secretary Clinton's tenure, Heather Samuelson initially worked as an assistant in State Department's White House Liaison Office and was later promoted to serve as the head of that office. Until her tenure at the State Department ended in March 2013, Samuelson was tasked with tracking the FOIA request served by CREW for records regarding Secretary Clinton's email accounts. Samuelson currently serves as one of Secretary Clinton's personal attorneys and, in 2014, reviewed Secretary Clinton's "clintonemail.com" email account to identify federal records. The records returned by Secretary Clinton in December 2014 were records identified by Samuelson. Samuelson's involvement in the processing of the CREW FOIA request and/or other requests pertaining to Secretary Clinton's email account was not known to Plaintiff when it submitted its discovery proposal on May 16, 2016. Samuelson was therefore not identified among the proposed deponents.

6. Lauren Jiloty to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached hereto as part of Exhibit 1; and
- d. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

Lauren Jiloty was Special Assistant to Secretary Clinton during her tenure and Plaintiff requested her deposition in its original, May 16, 2016 discovery proposal. In this capacity, Jiloty

entered Secretary Clinton's contacts into the secretary's Blackberries, and accordingly, is very likely to possess information about the identities of individuals with whom Secretary Clinton communicated by email. *See* Plaintiff's Reply in support of Notice of Proposed Order for Discovery, ECF No. 49 at ¶¶ 4-5.

7. Monica Hanley to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached hereto as part of Exhibit 1; and
- d. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, e.g., emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

Monica Hanley worked as a "Confidential Assistant" for Secretary Clinton in the Office of the Secretary. As a key assistant to Secretary Clinton, Hanley is likely to possess information about the identities of individuals with whom Secretary Clinton communicated by email. *See* Plaintiff's Reply in support of Notice of Proposed Order for Discovery, ECF No. 49 at ¶¶ 4-5. Plaintiff requested her deposition in its original discovery proposal.

8. Clarence Finney to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and

- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached hereto as part of Exhibit 1.

Clarence Finney currently is the Deputy Director of the State Department's Executive Secretariat Staff. During Secretary Clinton's tenure he served as principal advisor and records management expert to the Executive Secretary on matters relating to the overall management and control of all correspondence and records for Secretary Clinton and the various Deputy Secretaries of State and Under Secretaries of State. Finney was included among the original deponents identified in Plaintiff's May 16, 2016 discovery proposal. Finney also is among the State Department officials in the emails discussing the processing of the CREW FOIA request and other requests concerning the former Secretary's email account. *See* Doc. Request 4 above. The subject of the August 2014 emails with Finney was "Former Secretary E-mail Account." Ex. 1, Doc. No. C06104375.

9. Sheryl L. Walter to testify about the processing of the FOIA requests referenced in Document Request No. 4 above and the subject matters discussed in the documents attached hereto as part of Exhibit 1. *See* Document Request 4 above. Walter was the Director of the Office of Information Program and Services for the State Department, and she appears in the documents attached hereto and referenced in Document Request No. 4, above. Plaintiff did not have knowledge of Walter's involvement in the collections of the FOIA requests pertaining to Secretary Clinton's email account in 2014 or the CREW FOIA request, and, therefore, Walter was not listed among the original deponents in Plaintiff's discovery proposal.

10. Gene Smilansky to testify about the processing of the FOIA requests referenced in Document Request No. 4 above and the subject matters discussed in the documents attached hereto as part of Exhibit 1. *See* Document Request 4 above. Plaintiff did not have knowledge of

Smilansky's involvement in the processing of the FOIA requests pertaining to Secretary Clinton's email from 2012 through 2014, and, therefore, Plaintiff did not identify him as a deponent in its May 16, 2016 discovery proposal.

Plaintiff proposed that its discovery be conducted pursuant to the relevant Federal Rules of Civil Procedure. Plaintiff also proposes that its discovery shall conclude within 12 weeks of the Court's order authorizing Plaintiff's proposed discovery and that Defendant serve its complete responses to Document Request Nos. 1 through 4 above within 21 days of the Court's Order. In the event conflicts exist for scheduling third-party depositions, Plaintiff will seek leave from the Court to conduct those depositions on specific proposed dates outside the approved discovery period that are mutually available to all parties and third-parties.

Dated: January 10, 2017

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ Ramona R. Cotca
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Attorneys for Plaintiff

EXHIBIT 1

- CREW FOIA Request Dec. 6, 2012 (Doc. No. C06104785)
- State Response to CREW FOIA Request May 10, 2013 (Doc. No. C06104322)
- January 26, 2013 Email String with Heather Samuelson (Doc. No. C06104795)
- March 5, 2013 Email String with Heather Samuelson (Doc. No. C06071648)
- April 19, 2013 Email String with Gene Smilansky (Doc. No. C06104864)
- May 1, 2013 Email Strings with Gene Smilansky (Doc. Nos. C06105118 and C06105336)
- August 8, 2013 Email String with Gene Smilansky (Doc. No. C06105353)
- August 8, 2014 Email String with Gene Smilansky (Doc. No. C06104375)

CREW FOIA Request Dec. 6, 2012
(Doc. No. C06104785)

RELEASE IN FULL

CREW | citizens for responsibility
and ethics in washington

December 6, 2012

By facsimile: 202-261-8579

Office of Information Programs and Services
A/ISS/IPS/RL
U.S. Department of State, SA-2
Washington, D.C. 20522-8100

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and U.S. Department of State (State) regulations, 2 C.F.R. § 171, Citizens for Responsibility and Ethics in Washington (CREW) requests records sufficient to show the number of email accounts of or associated with Secretary Hilary Rodham Clinton, and the extent to which those email accounts are identifiable as those of or associated with Secretary Clinton. By "identifiable" we mean the extent to which the email account is in a name that would permit the public to identify it as an account of the secretary. Please note CREW does not seek the full email address(es) to the extent that would include any exempt information.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs.

If it is your position that any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224 (citing *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

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In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *Mead Data Central*, 566 F.2d at 261. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Finally, CREW welcomes the opportunity to discuss with you whether and the extent to which this request can be narrowed or modified to better enable DOJ to process it within the FOIA's deadlines. Toward that end, please feel free to contact me at 202-408-5565 or aweismann@citizensforethics.org.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.17, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government and expenditures, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. Moreover, the request primarily and fundamentally is for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii). See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

Specifically, these records are likely to contribute to greater public awareness of the extent to which Secretary Clinton, like the administrator of the Environmental Protection Agency (EPA), use email accounts not readily identifiable as her accounts. Recently it was reported that Administrator Jackson established alias email accounts to conduct official government business, including an account under the name "Richard Windson," which is not publicly attributable to her. See Brendan Sasso, House Republicans Question EPA Over Secret Email Accounts, *The Hill*, November 17, 2012 (attached as Exhibit A). Apparently this practice of alias accounts dates back to former EPA Administrator Carol Browner. Through this FOIA, CREW seeks to learn how widespread this practice is, and to evaluate the extent to which it has led to unresponsive responses to FOIA, discovery, and congressional requests, and a failure to preserve records in a way that complies with the Federal Records Act.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the government

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decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission. The release of information garnered through this request is not in CREW's financial interest. In addition, CREW will disseminate any documents it acquires from this request to the public through www.scribd.com and CREW's website, which also contains links to thousands of pages of documents CREW acquired from multiple FOIA requests. See www.citizensforethics.org. CREW's website includes documents relating to CREW's FOIA litigation, Internal Revenue complaints, and Federal Election Commission complaints.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

News Media Fee Waiver Request

CREW also asks that it not be charged search or review fees for this request because CREW qualifies as a "representative of the news media" pursuant to the FOIA. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.*

CREW routinely and systematically disseminates information to the public in several ways. First, CREW maintains a frequently visited website, www.citizensforethics.org, that received 33,571 page views in October 2012. The website reports the latest developments and contains in-depth information about a variety of activities of government agencies and officials. In addition, CREW posts all of the documents it receives under the FOIA on www.scribd.com, and that site has received 2,287,124 visits to CREW's documents since April 14, 2010.

Second, since May 2007, CREW has published an online newsletter, *CREWCuts*, that currently has 15,564 subscribers. *CREWCuts* provides subscribers with regular updates regarding CREW's activities and information the organization has received from government entities. A complete archive of past *CREWCuts* is available at <http://www.citizensforethics.org/newsletter>.

Third, CREW publishes a blog, *Citizens blogging for responsibility and ethics in Washington*, that reports on and analyzes newsworthy developments regarding government ethics and corruption. The blog, located at <http://www.citizensforethics.org/blog>, also provides links that direct readers to other news articles and commentary on these issues. CREW's blog had 5,664 page views in October 2012.

FOIA Officer
December 6, 2012
Page 4

Finally, CREW has published numerous reports to educate the public about government ethics and corruption, including agencies' failure to comply with their record keeping responsibilities. See *Record Chaos*, which examines agency compliance with electronic record keeping responsibilities; *The Revolving Door*, a comprehensive look into the post-government activities of 24 former members of President Bush's cabinet; and *Those Who Dared: 30 Officials Who Stood Up For Our Country*. These and all other CREW's reports are available at <http://www.citizensforethics.org/reports>.

Based on these extensive publication activities, CREW qualifies for a fee waiver as a "representative of the news media" under the FOIA.

If you have any questions about this request or foresee any problems in releasing fully and the requested records, please contact me at (202) 408-5565. Also, if CREW's request for a fee waiver is not granted in full, please contact me immediately upon making such determination. Please send the requested records to Anne L. Weismann, Citizens for Responsibility and Ethics in Washington, 1400 Eye Street, N.W., Suite 450, Washington, D.C. 20005.

Sincerely,



Anne L. Weismann
Chief Counsel

Enclosure

**State Response to CREW FOIA Request May 10, 2013
(Doc. No. C06104322)**

MAY 10 2013

Case No.: F-2012-40981

RELEASE IN FULL

Ms. Anne L Weismann
1400 Eye St., NW, Suite 450
Washington, DC 20005

Dear Ms. Weismann:

I refer to your letter dated December 6, 2012, requesting under the provisions of the Freedom of Information Act (Title 5 USC Section 552) and/or the Privacy Act (Title 5 USC Section 552a) the release of certain records maintained by the Department of State.

The Department of State has a number of record systems. Its Central Foreign Policy Record File is an automated, centralized records system, containing substantive foreign policy documents. Additionally, offices within the Department and Foreign Service posts abroad maintain files specific to their operations. Information about the Department and the mission and functions of its individual bureaus and offices, as well as its posts abroad, may be found at our website, www.state.gov or in the U.S. Government Manual published by the Government Printing Office and available at most public libraries.

Based on the subject matter of your request, we searched the files of the offices reasonably likely to maintain responsive records: the Bureau of Information Resource Management, the Executive Secretariat's Information Resources Management Office, and the Executive Secretariat's Office of Correspondence and Records. These files were searched by professional employees familiar with their contents and organization, and no records responsive to your request were located.

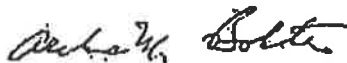
As background, it may be helpful for you to know that messages from the Secretary are occasionally transmitted to the Department via e-mail. However, these messages are transmitted from a "dummy" e-mail address that is not capable of receiving replies, rather than from a functioning e-mail account.

I regret that the Department's response to your request is not more positive. Please direct questions concerning the processing of your case to the Office of Information Programs and Services, A/GIS/IPS, SA-2, Room 8100, U.S. Department of State, Washington, D.C. 20522-8100; or to telephone number (202) 261-8484.

The D.C. Circuit Court of Appeals, in Oglesby v. Department of the Army, 920 F.2d 57 (D.C. Cir. 1990), ruled that a "no record" response constitutes an adverse determination, thereby requiring an agency to give appeal rights to the requester. Our determination that the Department does not have any records responsive to your request may be appealed within 60 days of the date of this letter. Although I believe that our search effort has been adequate, I want to be sure that you are aware of this court decision.

Appeals should be addressed to: Chairman, Appeals Review Panel, c/o Appeals Officer, A/GIS/IPS/PP/LC, Room 8100, SA-2, U.S. Department of State, Washington, D.C. 20522-8100. A copy of the Department's appeal procedures is enclosed. Please refer to the case control number shown above in all correspondence concerning this case.

Sincerely,



Sheryl L. Walter, Director
Office of Information Programs and Services

Enclosure:
As stated.

**January 26, 2013 Email String with Heather Samuelson
(Doc. No. C06104795)**

Smilansky, Gene

From: Samuelson, Heather F
Sent: Saturday, January 26, 2013 12:58 PM
To: Walter, Sheryl L
Cc: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: RE: CREW FOIA request

RELEASE IN PART
B5, B6

Follow Up Flag: Follow up
Flag Status: Completed

Categories: 2, ~C

Hi Sheryl,

Sorry we kept missing each other last week.

I heard back [redacted] Can we find a time to talk on Monday?

Thanks.
Heather

From: Walter, Sheryl L
Sent: Thursday, January 10, 2013 1:47 PM
To: Samuelson, Heather F
Cc: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: RE: CREW FOIA request

Thanks!

From: Samuelson, Heather F
Sent: Thursday, January 10, 2013 1:14 PM
To: Walter, Sheryl L
Cc: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: RE: CREW FOIA request

Hi Sheryl,

[redacted] was looking into this for me

I will circle back with them now to see if they have further guidance

Thanks.
Heather

From: Walter, Sheryl L
Sent: Thursday, January 10, 2013 1:01 PM
To: Samuelson, Heather F
Cc: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: CREW FOIA request

Hi Heather – did you ever get any Intell re [redacted]

B5

[redacted] Do you have any concerns about that approach? Thanks! Sheryl

Sheryl L Walter
Director, Office of Information Programs and Services
A/GIS/IPS; Room 5073, SA-2
U.S. Department of State
Washington, DC 20520
Direct: 202-632-2071
Mobile: [redacted]
Email: WalterSL@state.gov

B6

**March 5, 2013 Email String with Heather Samuelson
(Doc. No. C06071648)**

RELEASE IN
PART B5, B6

From: Davis, Jonathan E
Sent: Tuesday, March 05, 2013 9:33 AM
To: Samuelson, Heather F
Cc: Johnson, Brock A; Dorosin, Joshua L; Walter, Sheryl L; Finnegan, Karen M
Subject: RE: FOIA request from CREW

Heather – Thanks for following up. I understand that the next step is for IPS to

B5

B5

Best,
Jonathan

From: Samuelson, Heather F
Sent: Monday, March 04, 2013 2:02 PM
To: Dorosin, Joshua L; Walter, Sheryl L; Davis, Jonathan E
Cc: Johnson, Brock A
Subject: RE: FOIA request from CREW

All – I just wanted to follow up on the status.

As Friday will be my last day, I am adding Brock Johnson here who will track this request in my stead.

Thanks.
Heather

From: Dorosin, Joshua L
Sent: Friday, February 15, 2013 9:51 AM
To: Walter, Sheryl L; Samuelson, Heather F; Davis, Jonathan E
Subject: RE: FOIA request from CREW

+ Jonathan.

From: Walter, Sheryl L
Sent: Thursday, February 14, 2013 6:15 PM
To: Samuelson, Heather F; Dorosin, Joshua L
Subject: RE: FOIA request from CREW

I believe we are still

B5

This email is UNCLASSIFIED.

From: Samuelson, Heather F
Sent: Thursday, February 14, 2013 6:07 PM
To: Dorosin, Joshua L; Walter, Sheryl L
Subject: RE: FOIA request from CREW

Josh/Sheryl – I just wanted to follow up on this to see where things left off on this. Thanks!

From: Samuelson, Heather F
Sent: Saturday, January 26, 2013 3:48 PM
To: Dorosin, Joshua L
Subject: FW: FOIA request from CREW

From: Walter, Sheryl L
Sent: Thursday, December 20, 2012 1:54 PM
To: Samuelson, Heather F
Subject: FOIA request from CREW

Hi Heather – Copy attached [REDACTED]

B5
B5

[REDACTED] If we don't talk later, happy holidays! All the best, Sheryl

B5

Sheryl: The request is assigned Case #F-2012-40981. It was received on 12/6/2012 and acknowledged on 12/10/2012. The request is assigned for processing.

From: IPS-STAFF-Assistants
Sent: Thursday, December 20, 2012 12:42 PM
To: Walter, Sheryl L
Cc: Reid, Rosemary D; Scholl, Patrick D
Subject: RE: Need to track down a FOIA request from CREW

Hi Sheryl,

Yes we have, please see attached [REDACTED] down more details as necessary.

We can track

B5

Olivia Woods
Staff Assistant to the Director
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS
(202) 663-1012
SA-2, Room 5081-A

Our Mission is to meet the needs of our customers and the United States Government

This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Thursday, December 20, 2012 12:38 PM

To: Reid, Rosemary D; Scholl, Patrick D
Cc: IPS-STAFF-Assistants
Subject: Need to track down a FOIA request from CREW

[redacted] - have we received a FOIA request from CREW (Citizens for Responsible Ethics in Washington) on the topic of personal use of email by senior officials? Apparently other agencies have. If we have it, can you give me the details [redacted]
[redacted] Thanks! Sheryl

B5
B5
B5

Sheryl L Walter
Director, Office of Information Programs and Services
A/GIS/IPS; Room 5073, SA-2
U.S. Department of State
Washington, DC 20520
Direct: 202-632-2071
Mobile: [redacted]
Email: WalterSL@state.gov

B6

**April 19, 2013 Email String with Gene Smilansky
(Doc. No. C06104864)**

RELEASE IN PART
B5, B6

Smilansky, Gene

From: Davis, Jonathan E
Sent: Friday, April 19, 2013 4:59 PM
To: Johnson, Brock A; Walter, Sheryl L
Cc: Finnegan, Karen M; Dorosin, Joshua L; Smilansky, Gene
Subject: RE: FOIA request from CREW
Attachments: 2013-HQFO-00287 Final Response Letter.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: 2, 1

Brock - See attached for a copy of [REDACTED]
[REDACTED]

Best,
Jonathan

From: Johnson, Brock A
Sent: Friday, April 19, 2013 4:02 PM
To: Davis, Jonathan E; Walter, Sheryl L
Cc: Finnegan, Karen M; Dorosin, Joshua L; Smilansky, Gene
Subject: RE: FOIA request from CREW

Jonathan, Sheryl,

Where did we end up on this case? [REDACTED]

Thanks,
Brock

From: Davis, Jonathan E
Sent: Friday, March 08, 2013 11:04 AM
To: Johnson, Brock A
Cc: Finnegan, Karen M; Samuelson, Heather F; Dorosin, Joshua L; Walter, Sheryl L
Subject: RE: FOIA request from CREW

Brock - [REDACTED]
[REDACTED]

I'm copying Karen Finnegan in case she can provide additional information.

Thanks,
Jonathan

From: Johnson, Brock A
Sent: Friday, March 08, 2013 10:55 AM
To: Samuelson, Heather F; Dorosin, Joshua L; Walter, Sheryl L; Davis, Jonathan E
Subject: RE: FOIA request from CREW

Josh, Sheryl, Jonathan,

[Redacted]

Happy to call over there if needed, just let me know.

B5

Thanks,
Brock

From: Samuelson, Heather F
Sent: Monday, March 04, 2013 2:02 PM
To: Dorosin, Joshua L; Walter, Sheryl L; Davis, Jonathan E
Cc: Johnson, Brock A
Subject: RE: FOIA request from CREW

All - I just wanted to follow up on the status.

As Friday will be my last day, I am adding Brock Johnson here who will track this request in my stead.

Thanks.
Heather

From: Dorosin, Joshua L
Sent: Friday, February 15, 2013 9:51 AM
To: Walter, Sheryl L; Samuelson, Heather F; Davis, Jonathan E
Subject: RE: FOIA request from CREW

+ Jonathan.

From: Walter, Sheryl L
Sent: Thursday, February 14, 2013 6:15 PM
To: Samuelson, Heather F; Dorosin, Joshua L
Subject: RE: FOIA request from CREW

[Redacted]

B5

This email is UNCLASSIFIED.

From: Samuelson, Heather F
Sent: Thursday, February 14, 2013 6:07 PM
To: Dorosin, Joshua L; Walter, Sheryl L
Subject: RE: FOIA request from CREW

Josh/Sheryl - I just wanted to follow up on this to see where things left off on this. Thanks!

From: Samuelson, Heather F
Sent: Saturday, January 26, 2013 3:48 PM
To: Dorosin, Joshua L
Subject: FW: FOIA request from CREW

From: Walter, Sheryl L
Sent: Thursday, December 20, 2012 1:54 PM

To: Samuelson, Heather F
Subject: FOIA request from CREW

Hi Heather - Copy attached, [redacted]

B5

[redacted] If we don't talk later, happy holidays! All the best, Sheryl

Sheryl: The request is assigned Case #F-2012-40981. It was received on 12/6/2012 and acknowledged on 12/10/2012. The request is assigned for processing.

From: IPS-STAFF-Assistants
Sent: Thursday, December 20, 2012 12:42 PM
To: Walter, Sheryl L
Cc: Reid, Rosemary D; Scholl, Patrick D
Subject: RE: Need to track down a FOIA request from CREW

Hi Sheryl,

Yes we have, please see attached - [redacted]
down more details as necessary.

We can track

B5

Olivia Woods
Staff Assistant to the Director
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS
(202) 663-1012
SA-2, Room 5081-A

Our Mission is to meet the needs of our customers and the United States Government

This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Thursday, December 20, 2012 12:38 PM
To: Reid, Rosemary D; Scholl, Patrick D
Cc: IPS-STAFF-Assistants
Subject: Need to track down a FOIA request from CREW

[redacted] - have we received a FOIA request from CREW (Citizens for Responsible Ethics in Washington) on the topic of personal use of email by senior officials? Apparently other agencies have. If we have it, can you give me the details? [redacted]

B5

[redacted] Thanks! Sheryl

Sheryl L Walter
Director, Office of Information Programs and Services

A/GIS/IPS; Room 5073, SA-2
U.S. Department of State
Washington, DC 20520
Direct: 202-632-2071
Mobile:
Email: WalterSL@state.gov

B6

**May 1, 2013 Email Strings with Gene Smilanksy
(Doc. Nos. C06105118 and C06105336)**

RELEASE IN PART B5, B6

Smilansky, Gene

From: Gittleston, Brett A
Sent: Wednesday, May 01, 2013 2:15 PM
To: Smilansky, Gene
Subject: RE: FOIA request for documents related to S email accounts

Categories: 2

Will do.

From: Smilansky, Gene
Sent: Wednesday, May 01, 2013 1:52 PM
To: Gittleston, Brett A
Subject: RE: FOIA request for documents related to S email accounts

B5

Best,
Gene

SBU
This email is UNCLASSIFIED.

From: Gittleston, Brett A
Sent: Wednesday, May 01, 2013 10:33 AM
To: Smilansky, Gene
Subject: FW: FOIA request for documents related to S email accounts

Gene,

The bullets below correctly capture our discussion.

I've also attached the FOIA request from Edgar Jaramillo. Please let me know if you need anything else from me.

Thanks,
Brett

From: Smilansky, Gene
Sent: Wednesday, May 01, 2013 9:57 AM
To: Gittleston, Brett A
Subject: Re: FOIA request for documents related to S email accounts

Brett – Just following up about this. Glad to discuss further by phone, if helpful. Please let me know.

Many thanks,

Gene

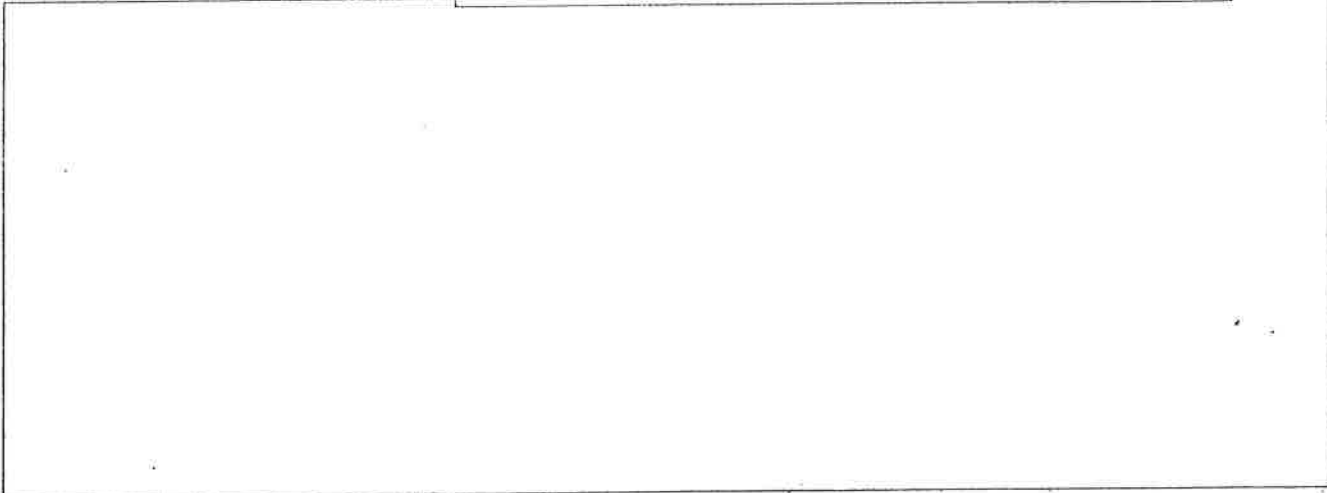
SBU

This email is UNCLASSIFIED.

From: Smilansky, Gene
Sent: Wednesday, April 24, 2013 10:03 AM
To: Gittleson, Brett A
Subject: FOIA request for documents related to S' email accounts

Brett - I am writing to follow up about the attached FOIA request for documents pertaining to any email accounts associated with then-Secretary Clinton. [Redacted]

B5



Best,
Gene

Gene Smilansky
Office of the Legal Adviser (L/M)
U.S. Department of State
Office: (202) 647-8093
Mobile: [Redacted]

B6

SBU

This email is UNCLASSIFIED.

RELEASE IN PART B5

Smilansky, Gene

From: Smilansky, Gene
Sent: Wednesday, May 01, 2013 2:47 PM
To: Walter, Sheryl L; Finnegan, Karen M; Davis, Jonathan E
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

B5

Categories: 2, 1
AttachmentsClassification: UNCLASSIFIED
Classification: UNCLASSIFIED
SensitivityCode: Sensitive
SMARTCategory: Working

[redacted]

B5

SBU
This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Wednesday, May 01, 2013 2:38 PM
To: Smilansky, Gene; Finnegan, Karen M; Davis, Jonathan E
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

B5

Thanks. [redacted]

SBU
This email is UNCLASSIFIED.

From: Smilansky, Gene
Sent: Wednesday, May 01, 2013 2:04 PM
To: Walter, Sheryl L; Finnegan, Karen M; Davis, Jonathan E
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

B5

[redacted]

Best,

Gene

SBU

This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Thursday, April 04, 2013 5:09 PM
To: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

B5

B5

Thanks, now I remember. [redacted]

This email is UNCLASSIFIED.

From: Finnegan, Karen M
Sent: Thursday, April 04, 2013 4:44 PM
To: Walter, Sheryl L; Davis, Jonathan E
Subject: Re: F-2012-40981 - [redacted] Clinton's e-mail

B5

B5

No, I haven't heard back from [redacted]

[redacted]

Karen

From: Walter, Sheryl L
Sent: Thursday, April 04, 2013 04:17 PM
To: Finnegan, Karen M; Davis, Jonathan E
Subject: FW: F-2012-40981 - [redacted] Clinton's e-mail

B5

Did we hear back from DHS? We have not responded yet, per the below.

This email is UNCLASSIFIED.

From: Scholl, Patrick D
Sent: Thursday, April 04, 2013 4:02 PM
To: Walter, Sheryl L
Subject: FW: F-2012-40981 - [redacted] Clinton's e-mail

B5

Sheryl - anything new on this one?

This email is UNCLASSIFIED.

B5

From: Jaramillo, Edgar E
Sent: Thursday, April 04, 2013 3:25 PM
To: Scholl, Patrick D
Cc: Gordon, Terry
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

Pat - I haven't head back.

Edgar

Edgar E. Jaramillo | A/GIS/IPS/CR/EAN | Phone: 202.261.8472 ex. 48472 | Fax: 202.261.8588 |
Europe, South Central Asia, Africa & Near Eastern Affairs | FOIA Office



Please consider the environment before printing this email

This email is UNCLASSIFIED.

From: Scholl, Patrick D
Sent: Friday, March 29, 2013 11:34 AM
To: Jaramillo, Edgar E
Cc: Gordon, Terry
Subject: RE: F-2012-40981 [redacted] Clinton's e-mail

[redacted]

However, if you hear nothing further

by next Thursday, please send me a reminder.

This email is UNCLASSIFIED.

From: Jaramillo, Edgar E
Sent: Friday, March 29, 2013 11:31 AM
To: Scholl, Patrick D
Cc: Gordon, Terry
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

Pat - Should I follow up with Karen and Jonathan on this one? Or they are already aware of it and will get back to us?

Edgar

Edgar E. Jaramillo | A/GIS/IPS/CR/EAN | Phone: 202.261.8472 ex. 48472 | Fax: 202.261.8588 |
Europe, South Central Asia, Africa & Near Eastern Affairs | FOIA Office



Please consider the environment before printing this email

This email is UNCLASSIFIED.

From: Scholl, Patrick D
Sent: Thursday, March 28, 2013 10:08 PM
To: Jaramillo, Edgar E
Cc: Gordon, Terry
Subject: Fw: F-2012-40981 - [redacted] Clinton's e-mail

B5

Fyi

From: Walter, Sheryl L
Sent: Thursday, March 28, 2013 04:08 PM
To: Scholl, Patrick D
Cc: Finnegan, Karen M; Davis, Jonathan E; Smilansky, Gene
Subject: RE: F-2012-40981 - [redacted] Clinton's e-mail

B5

Pat, [redacted] This is the CREW request. Thanks, Sheryl

B5

This email is UNCLASSIFIED.

From: Scholl, Patrick D
Sent: Thursday, March 28, 2013 9:04 AM
To: Walter, Sheryl L
Subject: FW: F-2012-40981 - [redacted] Clinton's e-mail

B5

Sheryl - [redacted]
[redacted] Just letting you know. Pat

B5

This email is UNCLASSIFIED.

From: Jaramillo, Edgar E
Sent: Wednesday, March 27, 2013 5:33 PM
To: Scholl, Patrick D; Gordon, Terry
Subject: F-2012-40981 - [redacted] Clinton's e-mail

B5

Pat/Terry,

FYI - [redacted]
[redacted] Sheryl's e-mail is attached.

Edgar

Edgar E Jaramillo | AGIS/IPS/CR/EAN | Phone: 202 261.8472 ex. 48472 | Fax: 202 261.8588 |
Europe, South Central Asia, Africa & Near Eastern Affairs | FOIA Office



Please consider the environment before printing this email

This email is UNCLASSIFIED.

**August 8, 2013 Email String with Gene Smilansky
(Doc. No. C06105353)**

RELEASE IN PART B5

Smilansky, Gene

From: Smilansky, Gene
Sent: Thursday, August 08, 2013 10:21 PM
To: Finnegan, Karen M; Walter, Sheryl L
Subject: RE: IPS Significant FOIA Report

Categories: 2

Sheryl, Karen – Is there a good time tomorrow for me to give you a call about this? I'm generally open 10am-2pm and 4-6pm.

Thanks,
Gene

From: Finnegan, Karen M
Sent: Wednesday, August 07, 2013 5:12 PM
To: Walter, Sheryl L
Cc: Smilansky, Gene
Subject: RE: IPS Significant FOIA Report

Sheryl: I've attached the CREW request to this message.

[Redacted]

B5

Karen

SBU
This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Wednesday, August 07, 2013 4:34 PM
To: Finnegan, Karen M
Subject: RE: IPS Significant FOIA Report

If so, can you send me the response as well as the request letter? Thanks!

This email is UNCLASSIFIED.

From: Finnegan, Karen M
Sent: Wednesday, August 07, 2013 4:17 PM
To: Walter, Sheryl L
Subject: RE: IPS Significant FOIA Report

I believe that we responded to this request, but I'll confirm with Gene.

Karen

This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Wednesday, August 07, 2013 4:11 PM
To: Finnegan, Karen M
Subject: RE: IPS Significant FOIA Report

What about the CREW request? Is that still outstanding?

This email is UNCLASSIFIED.

From: Finnegan, Karen M
Sent: Wednesday, August 07, 2013 4:10 PM
To: Walter, Sheryl L; Hermesman, Geoffrey F; Scholl, Patrick D; Hackett, John; Manhelm, Marianne J
Subject: RE: IPS Significant FOIA Report

Sheryl: To follow-up on my early response, Cristina is handling the Judicial Watch case, CA No. 2013-772 (DDC) (J. Kollar-Kotelly), that seeks access to all communications (including e-mail) between the Department and President Clinton and/or his foundation regarding clearing his speeches

[Redacted]

[Redacted]

B5

Karen

This email is UNCLASSIFIED.

From: Walter, Sheryl L
Sent: Wednesday, August 07, 2013 2:52 PM
To: Hermesman, Geoffrey F; Finnegan, Karen M; Scholl, Patrick D; Hackett, John; Manhelm, Marianne J
Subject: RE: IPS Significant FOIA Report

Is the Gawker request from 2010 re Rahm Emmanuel emails still open? I thought that one was done.

This email is UNCLASSIFIED.

From: Hermesman, Geoffrey F
Sent: Wednesday, August 07, 2013 12:54 PM
To: Walter, Sheryl L; Finnegan, Karen M; Scholl, Patrick D; Hackett, John; Manhelm, Marianne J
Subject: RE: IPS Significant FOIA Report

Sheryl,

A search of the F 2 database identified 17 FOIA cases that contain Clinton in the subject line and can be further construed as requests for correspondence between the Secretary and other individuals and/or organizations. Of these, four specifically mention Emails or Email accounts.

CLOSED CASES

Of the 17 cases, 10 are closed. Closed requests F-2010-05294 and F-2012-40981 specifically mention Emails.

OPEN CASES

Of the remaining 7 open cases, requests F-2010-07625 and F-2013-12881 specifically mention Emails. The latter was received on 7/31/13 and is still being processed in RC. Both request letters are attached.

Geoffrey Hermesman
Branch Chief
IPS/CR/WEP
U.S. Department of State
Washington, DC 20522
Tel. 202 663 2634
hermesmangl@state.gov

This e-mail is unclassified based on the definitions provided in E.O. 13526

From: Walter, Sheryl L
Sent: Wednesday, August 07, 2013 10:51 AM
To: Finnegan, Karen M; Scholl, Patrick D; Hackett, John; Manhelm, Marjanne J; Hermesman, Geoffrey F
Subject: FW: IPS Significant FOIA Report

All, please see Peggy's comments below, we should discuss theses.
Geoff, can you get a copy of all requests related to Secretary Clinton's emails?
Karen, I don't think we have any litigation on this topic, do we? Did we respond to the CREW request yet?
Thanks, all Sheryl

SBU
This email is UNCLASSIFIED.

From: Grafeld, Margaret P
Sent: Wednesday, August 07, 2013 10:47 AM
To: Walter, Sheryl L; Hackett, John
Cc: Stein, Eric F; Houser-Jackson, Celeste
Subject: Fw: IPS Significant FOIA Report

I'll be interested in the response to Musgrove's request.

Also, I'm curious about how you plan to address the CRS request, as well as for the employee meds request.

Finally, John, you mentioned yesterday requests for Secretary Clinton's emails; may I get copies, pls and thx.

From: IPS-STAFF-Assistants
Sent: Wednesday, August 07, 2013 09:50 AM
To: Chang, Cindy
Cc: Summers, Matt; Finnegan, Karen M; A Staff Collective; Wasser, Jonathon D; Stein, Eric F; Davis, Jonathan E; Smilansky, Gene; Houser-Jackson, Celeste; Finney, Clarence N; Walter, Sheryl L; Reid, Rosemary D; Mehlenbacher, Kelly J; Hackett, John; Grafeld, Margaret P; Bemish, Renee C
Subject: IPS Significant FOIA Report

All:

Attached is the Significant FOIA Report for this week; it is also reproduced below for easy reference. Please contact me if you have any questions.

Thank you,

Olivia Woods
Staff Assistant to the Director
U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS
(202) 663-1012
SA-2, Room 5081

Our Mission is to meet the needs of our customers and the United States Government

(U) IPS FOIA Requests of Interest: Among the requests received by IPS FOIA are the following:

- Barbara Elias of the National Security Archive for all reports related to the July 30, 2013 prison break in Dera Ismail Khan, Pakistan;
- Cora Currier of *ProPublica* for documents regarding the deaths and burials of Taliban prisoners of war at Dasht-i-Leili, Afghanistan, in November 2001;
- Sarah Fitzpatrick of *CBS News* for the number of State Department employees prescribed Mefloquine or Lariam annually, as well as the number of those employees who received a diagnosis and/or treatment for a psychiatric issue or traumatic brain injury in the six months prior to receiving their prescription, from 2001 to the present;
- Brooke Williams of Harvard University's Edmond J. Safra Center for Ethics for all communications between the State Department and the Center for Strategic and International Studies that refer to the Keystone XL pipeline;
- Rebecca Markert of the Freedom From Religion Foundation for records regarding the Department's addition of religious quotes to U.S. passports;

- John Greenwald, Jr., freelance journalist and television producer, for the following:
 1. all Congressional Research Service reports that are not currently listed on the State Department's website, at <http://fpc.state.gov/c55696.htm>; and
 2. all records regarding the August 2013 *Rolling Stone* issue featuring Dzhokhar Tsarnaev.
- Shawn Musgrave of *MuckRock News* for the document that outlines the State Department's methodology for estimating FOIA completion dates; and
- Michael Evans of the National Security Archive for the following:
 1. the 50 cables referred to in the notes of the June 29, 2009 Department assessment titled, "Colombia: Institutional Standoff Continues";
 2. all documents pertaining to the U.S.-Mexico Repatriation Technical Working Group, from 2004 to the present;
 3. the 24 cables referred to in the notes of the May 26, 2009 Department assessment titled, "Colombia: Uribe's Third-Term Prospects"; and
 4. the 16 cables referred to in the notes of the June 4, 2010 Department assessment titled, "Colombia: More of the Same with Santos?"

This email is UNCLASSIFIED.

**August 8, 2014 Email String with Gene Smilansky
(Doc. No. C06104375)**

RELEASE IN PART B5

Smilansky, Gene

From: Smilansky, Gene
Sent: Friday, August 08, 2014 5:46 PM
To: Bair, James P; Keller, Andrew N
Subject:
Attachments:

[Redacted]

Categories: 2, 1

[Redacted]

We should discuss next week.

SBU
This email is UNCLASSIFIED.

From: Bair, James P
Sent: Friday, August 08, 2014 4:21 PM
To: Keller, Andrew N; Smilansky, Gene
Subject: Fw:

[Redacted]

From: Finney, Clarence N
Sent: Friday, August 08, 2014 04:19 PM
To: Bair, James P
Cc: Wasser, Jonathon D; Finney, Clarence N
Subject: Former Secretary E-Mail Account.

Jamie,

[Redacted]

Clarence

Clarence N. Finney Jr.
Deputy Director, Executive Secretarial Staff (S/ES-S)
(202) 647-3574 (office)

EXHIBIT 2

- FBI Notes from December 22, 2015 Interview of Bryan Pagliano (also available online at <https://vault.fbi.gov/hillary-r.-clinton/hillary-r.-clinton-part-03-of-05/view>)

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ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-19-2016 BY J37J85T94 NSICG

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 12/30/2015

(U//~~FOUO~~) On December 22, 2015, BRYAN PAGLIANO was interviewed by Federal Bureau of Investigation (FBI) Special Agents [redacted] and Information Technology Specialist/Forensic Examiner [redacted] at the offices of the Department of Justice's Counterintelligence and Export Control Section (CES). Also present, were AkinGump attorneys [redacted] [redacted] Connor Mullin, Counsel and Mark MacDougall, Partner. Additionally, [redacted] and [redacted] from the U.S. Department of Justice were also present. After being advised of the identities of the interviewing agents, and the purpose of the interview, PAGLIANO provided the following information:

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(U//~~FOUO~~) PAGLIANO [redacted]

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[redacted] HILLARY CLINTON, PAGLIANO came to work on HILLARY CLINTON's 2008 presidential campaign as an information technology specialist. Following HILLARY CLINTON's appointment as the Secretary of State in 2009, PAGLIANO gained employment at the Department of State (DOS) as an Information Technology Specialist in the Bureau of Resource Management.

(U//~~FOUO~~) In the fall of 2008, JUSTIN COOPER introduced himself to PAGLIANO via email and subsequently called PAGLIANO. In the call, COOPER stated he understood PAGLIANO was liquidating computer equipment from HILLARY CLINTON's 2008 presidential campaign and explained he was interested in transitioning from an Apple OS X private email server used by aides of BILL CLINTON to another email exchange server. COOPER asked PAGLIANO for help setting up new equipment to support a new email server and for assistance in the administration of the server. PAGLIANO began work on building an email server at K street using computer equipment from HILLARY CLINTON's 2008 presidential campaign. In late 2008, at the time PAGLIANO was building the server, he did not know HILLARY CLINTON would be Secretary of State or have an account on the server. PAGLIANO believed the email server he was building would be used for private email exchange with BILL CLINTON aides.

(U//~~FOUO~~) Around March 2009, once the new server equipment was assembled, COOPER and PAGLIANO met at the CLINTON residence in Chappaqua, NY to install the server and migrate the email

Investigation on 12/22/2015 at Washington, D.C.

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File # [redacted] 302 Date dictated N/A

By SA [redacted] SA [redacted]

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Continuation of FD-302 of Interview of Bryan Pagliano, On 12/22/2015, Page 2

accounts from the Apple OS X server to the new server. PAGLIANO also recalled that [redacted] [redacted] was present, as well as some United States Secret Service (USSS) Special Agents. PAGLIANO recalled the Apple OS X server to be in the basement at Chappaqua and consisting of an Apple Power Macintosh G4 or G5 tower and an HP printer supported by Internet Printing Protocol (IPP) over port 9100 so that staff could print from the Harlem office. PAGLIANO installed the new server equipment which was comprised of a 12-unit (12U) rack with a Dell PowerEdge 1950 used as a Blackberry Enterprise Server (BES), Dell PowerEdge 2900, Dell unmanaged switch, 3U power supply, 3 terabyte (TB) external hard drive, Kiwi Syslog Server, and a Cisco Private Internet eXchange (PIX) 515E IP firewall (the collection of server equipment hereafter referred to as Exchange Server 1). PAGLIANO stated that he did not utilize tape backups but implemented "disk-to-disk" backups instead. PAGLIANO began the email migration from the Apple OS X server to Exchange Server 1 while on-site in Chappaqua in March 2009, but did not finish on-site and continued working on the migration from his hotel room. PAGLIANO believed he "popped out" all the email from the Apple OS X server when migrating and that no email content should have existed on the Apple OS X server once it was migrated to Exchange Server 1. COOPER changed the Mail Exchange (MX) records to ensure delivery to Exchange Server 1. There were only two system administrators on Exchange Server 1, PAGLIANO and COOPER. PAGLIANO disagreed with housing Exchange Server 1 in a residential basement due to having only one unreliable internet connection. COOPER disagreed and wanted physical access to Exchange Server 1. PAGLIANO never knew of Exchange Server 1 residing in another physical location other than Chappaqua.

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(U//~~FOUO~~) As far as the Apple OS X server is concerned, PAGLIANO did not know of any other function or use of the server, other than to facilitate email exchange. PAGLIANO did not know who installed the Apple OS X server, but believed COOPER was the only person with administrator access. Two email domains existed on the Apple OS X server, presidentclinton.com and clintonemail.com. Both domains were also maintained on Exchange server 1. PAGLIANO believed [redacted] COOPER, [redacted] and [redacted] had email accounts on the presidentclinton.com domain, and HUMA ABEDIN and [redacted] had email accounts on the clintonemail.com domain. Once email was migrated to Exchange server 1, all users could use either the presidentclinton.com or clintonemail.com domains for receiving email but replies would be sent from the clintonemail.com domain for users of the clintonemail.com domain. PAGLIANO did not know if HILLARY CLINTON had an account on the Apple OS X server, but he did not migrate one. PAGLIANO did not know how users connected to the Apple OS X server. [redacted] or COOPER would monitor the printer linked to the Apple OS X server, but PAGLIANO was unaware what, if anything, it was used for. PAGLIANO believed the people with physical access to the Apple OS X server was anyone who had access to the basement at the CLINTON residence. [redacted] had physical access, but not administrative access, to the OS X server. Sometime after the email migration from the Apple OS X server to Exchange server 1 was complete, COOPER discussed repurposing the Apple OS X server with PAGLIANO. PAGLIANO believed the intention was for the Apple OS X server to be installed as a workstation somewhere in the basement in Chappaqua for use by either COOPER or [redacted]

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Continuation of FD-302 of Interview of Bryan Pagliano, On 12/22/2015, Page 3

(U//~~FOUO~~) PAGLIANO requisitioned the hardware for Exchange Server 1 from a datacenter at HILLARY CLINTON's presidential campaign headquarters at 4420 W. Fairfax Drive, Arlington, Virginia. He recalled the PowerEdge 2900 to have been a Microsoft SQL server and PAGLIANO did not recall if he wiped the drives of the hardware used to build Exchange Server 1. PAGLIANO made the decision to use a Microsoft Small Business Server (SBS) environment on Exchange Server 1 since he had used it before and assessed it would be perfect for a small amount of users exchanging email. Exchange Server 1 was only used for email exchange, and although PAGLIANO did enable Windows SharePoint Services, it was never used. PAGLIANO wanted to use a cloud service similar to that used in HILLARY CLINTON's 2008 Presidential campaign, but COOPER disagreed with PAGLIANO and did not want to use a cloud service. Because of this decision, PAGLIANO used an external hard drive to back-up Exchange Server 1 using Windows back-up service. To effect this change, PAGLIANO scheduled a task through Windows for a full back-up once a week and a differential back-up every day. These periodic back-ups would overwrite on the hard drive in a first-in, first-out manner. For security, PAGLIANO used Microsoft Forefront on the Dell PowerEdge 2900 as a baseline security analyzer. PAGLIANO recalled finding a virus, but recalled no other detail, other than it being nothing of great concern. PAGLIANO chose to turn File Transfer Protocol (FTP) off.

(U//~~FOUO~~) PAGLIANO thought the biggest vulnerability to Exchange Server 1 to be a Brute Force Attack (BFA). PAGLIANO stated that BFAs increased over the life of the server and he set-up the logs to alert COOPER of a failed log-in-attempt. The Internet Protocol (IP) filtering on the server was manual using a 515E straight IP block and PAGLIANO used Domain Name System (DNS) for inbound filtering. On the Dell PowerEdge 1950, PAGLIANO used a Kiwi Syslog server and tried to pull and review the firewall log files once a month. At some point, COOPER put PAGLIANO in contact with [REDACTED] from the USSS for a reason unknown to PAGLIANO. [REDACTED] told PAGLIANO to also perform outbound filtering of email traffic.

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(U//~~FOUO~~) The back-up hard drive and mailboxes on Exchange server 1 were not encrypted. PAGLIANO wanted to move toward two-factor authentication using an RSA authentication server for all Remote Desktop Protocol (RDP) access on Exchange Server 1 because he thought it was a good practice. As a test, PAGLIANO installed it on his workstation, as well as COOPER's, but PAGLIANO did not end up implementing two-factor authentication and did not turn off RDP access. PAGLIANO stated there were no security breaches on Exchange Server 1, but there were a lot of BFAs. PAGLIANO knew the attempts were BFAs instead of users forgetting their passwords because the user names in the BFA attempts weren't even close to any legitimate user name. PAGLIANO could not recall a specific country that would attempt an inordinate amount of BFAs.

(U//~~FOUO~~) In summer 2009, PAGLIANO noticed an account on Exchange server 1 called "H." PAGLIANO asked COOPER who this email account belonged to and COOPER stated it belonged to HILLARY CLINTON. PAGLIANO assumed the account was a personal email account. PAGLIANO

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Continuation of FD-302 of Interview of Bryan Pagliano, On 12/22/2015, Page 4

recalled the email account to be HDR22@clintonemail.com. Later, after SYDNEY BLUMENTHAL's email account was hacked, HILLARY CLINTON's account changed to HROD19@clintonemail.com.

(U//~~FOUO~~) In summer 2009, [redacted] and [redacted] both Information Technology Specialists at the DOS, contacted PAGLIANO and asked him to come to the 7th floor in DOS Headquarters. Once there, PAGLIANO was asked if he was aware of the clintonemail.com domain and PAGLIANO replied in the affirmative. PAGLIANO recalled nothing further about this encounter. PAGLIANO relayed this incident to [redacted] and [redacted] had a "visceral" reaction and didn't want to know anymore. In late 2009 or early 2010, [redacted] reached out to PAGLIANO again and relayed to PAGLIANO that the use of a private email server by HILLARY CLINTON may be a federal records retention issue. [redacted] relayed to PAGLIANO that he wanted to convey this to HILLARY CLINTON's inner circle, but could not reach them and asked if PAGLIANO would relay this information. PAGLIANO then approached CHERYL MILLS in her office and relayed [redacted] concerns regarding federal records retention and the use of a private email server. PAGLIANO remembers MILLS replying that former Secretaries of State had done the same thing, to include COLIN POWELL. PAGLIANO thought he may have also mentioned the federal records retention issue with JUSTIN COOPER. Additionally, PAGLIANO recalled a third conversation with [redacted] where [redacted] brought up security concerns and stated that email transiting from a state.gov account to Exchange Server 1 should be through a Transport Layer Security (TLS) tunnel. [redacted] stated to PAGLIANO that he wouldn't be surprised if classified information was being transmitted.

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(U//~~FOUO~~) PAGLIANO stated the hardware used for Exchange Server 1 was paid for by the CLINTON family and through the 2008 presidential campaign and at least some of the hardware was acquired through US21 Computers. PAGLIANO believed most financial and acquisition matters regarding the CLINTONs would go through COOPER directly. PAGLIANO performed work for the CLINTONs without a contract and through contact with COOPER. COOPER wanted to do work under a retainer, but they settled on an hourly wage.

(U//~~FOUO~~) In June 2011, PAGLIANO travelled to Chappaqua to perform maintenance and install new upgrades to Exchange Server 1. The discs began failing in the 3 TB external hard drive in Exchange Server 1 and PAGLIANO replaced it with a CISCO NAS storage device. PAGLIANO chose CISCO because they make good products and he may have consulted US21 Computers as well. PAGLIANO allocated more than half of the storage space for back-ups of Exchange Server 1 and the rest for file storage. When uninstalling the 3 TB hard drive and installing the CISCO NAS, PAGLIANO did not move the contents from one to the other. PAGLIANO simply unplugged the USB connection for the 3TB hard drive and pointed the server back-ups toward the CISCO NAS. PAGLIANO also added memory to the Dell PowerEdge 1950, added a Gigabit switch, upgraded to a CISCO ASA 5500 firewall, off loaded syslogging to the CISCO NAS, brought a CISCO botnet filter and CISCO Intrusion Prevention Service (IPS) and replaced the batteries on the UPS along with other various upgrades and maintenance. Additionally, PAGLIANO upgraded the BES from 5.0 to 6.0 and checked for any software patching.

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(U//~~FOUO~~) In the Winter of 2011, the Internet Service Provider (ISP) providing internet service to the CLINTON residence in Chappaqua went down due to a storm. As a result, Exchange Server 1 was unable to process email. While the Internet was down, and to ensure email delivery, PAGLIANO advised COOPER to change the mail exchanger (MX) record for email accounts on Exchange Server 1 to point to Google. PAGLIANO wasn't certain if COOPER did this or who it was done for, but assumed it was done for HILLARY CLINTON and HUMA ABEDIN since they were the most concerned about lack of email delivery.

(U//~~FOUO~~) Individuals with an email account on Exchange Server 1 could log into their account through any means available to them. PAGLIANO viewed his responsibilities as maintenance and operation of the server. PAGLIANO recalled HILLARY CLINTON used a BlackBerry as a mobile device, but could not recall the various handsets. PAGLIANO met with MONICA HANLEY at some point in 2011 or 2012 to configure a BlackBerry for HILLARY CLINTON, but could not recall any detail about the device.

(U//~~FOUO~~) Upon [redacted] leaving the CLINTON's employ and pursuant to a request from [redacted] PAGLIANO recalled doing an export of 40 Gigabytes of [redacted] email. This is the only export PAGLIANO could recall doing. PAGLIANO believed he may have done an export of email for [redacted] but could not recall. PAGLIANO did recall doing an import of DOS contacts for HUMA ABEDIN onto Exchange Server 1.

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(U//~~FOUO~~) PAGLIANO could not recall accessing the content of email on Exchange Server 1 and was never aware of any classified information residing on Exchange Server 1.

(U//~~FOUO~~) In early 2013, PAGLIANO recalled the user limitations and reliability of Exchange Server 1 prompted discussions to search for another vendor to manage a CLINTON email exchange server. PAGLIANO recalled a conversation with [redacted] and COOPER about [redacted] [redacted] career aspirations and what email requirements she may need. Eventually, MILLS and [redacted] [redacted] weighed in relating to Exchange Server 1 and the end of HILLARY CLINTON's tenure as Secretary of State. At some point, an individual named [redacted] began the process of finding a vendor to manage a new CLINTON email exchange server. PAGLIANO did not know [redacted] previously, or how she came to be involved with the search for a vendor. Eventually [redacted] showed PAGLIANO a presentation detailing three vendors and their capabilities. PAGLIANO recommended a company called Platte River Networks (PRN). Ultimately, PAGLIANO recalled the decision being with [redacted] and she chose PRN.

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(U//~~FOUO~~) Once the decision was made to go with PRN, PAGLIANO recalled communicating with PRN employee [redacted] related to the transition from Exchange Server 1 to the server PRN was going to use. Around this time, PAGLIANO was already 4 to 5 months into a new job as an IT

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specialist at GARTNER. PAGLIANO gave [redacted] administrator access to Exchange Server 1 as well as user names and passwords to individual email accounts. PAGLIANO recalled talking to [redacted] once or twice and possibly, [redacted]. In order to prepare Exchange Server 1 for the transition to PRN, PAGLIANO also "trimmed" mailboxes and cleared out white space. PAGLIANO described this as a maintenance process of reclaiming space from old mailboxes, like in the example of [redacted].

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(U//~~FOUO~~) Based on conversations he had or was aware of, PAGLIANO recalled knowing that PRN was going to use a DATTO service for backing up their server, a CloudJacket device for network protection, and potentially, two-factor authentication. [redacted] was responsible for establishing the contract of services PRN was going to implement and ensure they were implemented.

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(U//~~FOUO~~) PAGLIANO was shown an email dated January 30, 2014 where a user list was populated by Platte River Networks regarding their management of a CLINTON email server. Regarding the email, PAGLIANO did not recognize the mailbox "HRC Archive." PAGLIANO stated after PRN took control of managing an email server for the CLINTONS, he had no visibility into the server or the mailboxes.

(U//~~FOUO~~) In what PAGLIANO remembered as the fall of 2013, MILLS called PAGLIANO and inquired about the effectiveness of two types of software for wiping computer data, but PAGLIANO could not recall the names of the software. PAGLIANO discussed the difference between "bit" wiping and deleting with MILLS. PAGLIANO inferred from his conversation with MILLS that PRN was going to excise data. PAGLIANO recalled using Boot and Nuke software when deleting and repurposing computers while working on HILLARY CLINTON's 2008 presidential campaign, but didn't recall if he discussed that with MILLS.

(U//~~FOUO~~) In July 2014, PAGLIANO had a conference call with MILLS and [redacted] to discuss an archive of HILLARY CLINTON emails from her time as Secretary of State. PAGLIANO recalled that MILLS and [redacted] were trying to determine why a gap existed in HILLARY CLINTON's emails between January 2009 and March 2009. In separate conversations with COOPER, PAGLIANO understood that CLINTON used a BlackBerry email address before hosting her account on Exchange Server 1 and that explained the gap from January 2009 to March 2009. PAGLIANO could not recall a conversation with MILLS or [redacted] after July 2014.

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(U//~~FOUO~~) In Spring 2015, MILLS asked PAGLIANO if he would mind talking to DAVID KENDALL from Williams & Connolly LLP. PAGLIANO agreed to talk to KENDALL and described the interaction as a shorter version of PAGLIANO's conversation with FBI agents as memorialized herein. PAGLIANO stated there is nothing he told KENDALL that he didn't also relay to the interviewing FBI agents.

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(U//~~FOUO~~) At this point in the interview, FBI agents displayed documents to PAGLIANO that were Bates stamped as an identifying mark. PAGLIANO was asked questions as it pertained to each respective document. The following was provided by PAGLIANO:

(U//~~FOUO~~) After viewing a document marked HC-001, PAGLIANO stated the credit of \$5,000.00 to his account was a payment, including expenses, for his work in March 2009 setting up Exchange Server 1. The payment of \$8,350.83 in June 2011 was for his previously described maintenance work on Exchange Server 1, to include expenses.

(U//~~FOUO~~) After viewing a document marked HC-014, PAGLIANO stated the line item "1/11/2011 Conference call with Security team" was the previously described communication with [redacted] related to outbound filtering. PAGLIANO stated [redacted] was an individual he worked with at US21 Computers. PAGLIANO recalled HILLARY CLINTON turned off Bluetooth capability on her BlackBerry, while COOPER, and possibly [redacted] enabled Bluetooth on their handsets.

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(U//~~FOUO~~) PAGLIANO stated [redacted] referred to in a document marked HC-023, was [redacted]
[redacted]

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(U//~~FOUO~~) After viewing a document marked HC-008, PAGLIANO stated the "Mailbox kick off" indicated in the invoice was related to the previously described work exporting [redacted] mailbox.

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(U//~~FOUO~~) After viewing a document marked HC-004, PAGLIANO stated the iPad referred to in the invoice belonged to HILLARY CLINTON. PAGLIANO did not configure the iPad and could not recall when HILLARY CLINTON started using it, nor any other details related to the iPad.

(U//~~FOUO~~) After viewing a document marked HC-010, PAGLIANO stated in March 2013, MILLS requested an analysis of Exchange Server 1. PAGLIANO recalled giving Exchange Server 1 a B+ grade and conveyed in his analysis the limitations of Exchange Server 1 and recommendations for a more robust email system. PAGLIANO relayed the greatest liability of Exchange Server 1 to be reliability and referenced the incidents in which the ISP lost power and was unable to provide internet service to the residence in Chappaqua. PAGLIANO had always been against housing a server in a residential basement and preferred the security and reliability of an established data center. MILLS did not have an email account on Exchange Server 1 and used state.gov and gmail for email exchange.

(U//~~FOUO~~) After viewing a document marked HC-002, PAGLIANO stated the virtual private network (VPN) referred to in the invoice was not for users of Exchange Server 1 and just for administrator use. PAGLIANO stated he installed the IPS at the same time the CISCO ASA firewall went in place in June 2011. PAGLIANO fine tuned the IPS over time, fluctuating between turning logging on and off as needed.

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(U//~~FOUO~~) The notes of the interview and all aforementioned documents displayed to PAGLIANO will be stored in a FD340 envelope and filed with the captioned investigation.

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

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

[PROPOSED] ORDER FOR DISCOVERY

Pursuant to the Court’s March 29, 2016 and December 21, 2016 Orders, Plaintiff, Judicial Watch, Inc.’s Notice of Revised Discovery Proposal and the record herein, it is hereby **ORDERED** that Plaintiff shall take the following discovery in this case:

Document Requests

1. All documents that concern or relate to the processing of any and all searches of the Office of the Secretary for emails relating to the September 11, 2012 Benghazi attack and its aftermath, including but not limited to:
 - a. searches for records for the Accountability Review Board;
 - b. searches in response to congressional inquiries (including requests from the House Committee on Oversight and Government Reform dated September 20, 2012, October 2, 2012, October 29, 2012, and November 1, 2012);
 - c. searches in preparation of Secretary Clinton’s testimony before Congress on January 23, 2013; and
 - d. searches in response to FOIA requests, including but not limited to the FOIA request submitted by Plaintiff in this case.

Such documents would include the tasking, tracking and reporting records for such searches. Forms DS-1748 and any “search slips,” “search tasker,” “search details,” shall also be considered responsive.

2. All communications that concern or relate to the processing of all searches referenced in Document Request No. 1 above, including directions or guidance about how and where to conduct the searches, whether and how to search Secretary Clinton's email, Cheryl Mills' email, Huma Abedin's email and Jacob Sullivan's email, and issues, problems, or questions concerning the searches and/or search results.
3. All records that concern or relate to the State Department's policies, practices, procedures and/or actions (or lack thereof) to secure, inventory, and/or account for all records, including emails of Secretary Clinton, Cheryl Mills, Huma Abedin, Jacob Sullivan and staff within the Office of the Secretary prior to their termination of employment with the State Department and afterwards.
4. Copies of the documents attached to Plaintiff's Notice of Revised Discovery Proposal as Exhibit 1 with Exemption 5 redactions removed.

Depositions

1. 30(b)(6) witness(es) to testify about:
 - a. the searches referenced in Document Request Nos. 1 and 2 above;
 - b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and
 - c. the processing of the FOIA requests referenced in the emails attached as Exhibit 1 to Plaintiff's Notice of Revised Discovery Proposal and discussed in Plaintiff's Document Request No. 4 above, including but not limited to the processing of the CREW FOIA request, the other requests discussed therein from 2012 through 2014 and Plaintiff's FOIA request at issue in this case.
2. Cheryl Mills to testify about:
 - a. the searches referenced in Document Request Nos. 1 and 2 above;
 - b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
 - c. the processing of the FOIA requests referenced in Document Request No. 4 above;
 - d. Mills' subsequent search of her non-state.gov email account(s) for federal records and the return of those records to the State Department in or about 2015. (Defendant has not yet searched the records returned by Mills to determine whether any of those records are responsive to Plaintiff's FOIA request.);

- e. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton and/or Mills may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.); and
 - f. Mills' discussion with Bryan Pagliano in 2009 and 2010 about concerns raised internally at the State Department regarding Secretary Clinton's email practices and "federal records retention issues" regarding those practice.
3. Jacob Sullivan to testify about:
- a. the searches referenced in Document Request Nos. 1 and 2 above;
 - b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
 - c. Sullivan's use of non-state.gov email account(s) to conduct official, State Department, business and the subsequent "private" search of his non-state.gov email account(s) for federal records and the return of those records to the State Department in or about 2015 (Defendant has not yet searched the records returned by Sullivan to determine whether those records are responsive to Plaintiff's FOIA request.); and
 - d. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton and/or Sullivan may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)
4. Secretary Hillary Rodham Clinton to testify about:
- a. the searches referenced in Document Request Nos. 1 and 2 above; and
 - b. identification of individuals (whether State Department officials, other government officials, or third-parties, including but not limited to Sidney Blumenthal) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department

regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

5. Heather Samuelson to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1.

6. Lauren Jiloty to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1; and
- d. identification of individuals (whether State Department officials, other government officials, or third-parties) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, *e.g.*, emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

7. Monica Hanley to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above;
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1; and
- d. identification of individuals (whether State Department officials, other

government officials, or third-parties) with whom Secretary Clinton may have communicated by email. (As a possible remedy, Plaintiff may seek an order requiring the State Department to identify and recover federal records, e.g., emails sent or received by Secretary Clinton during her tenure at the State Department regarding official State Department business, from other sources or custodians. This line of inquiry seeks information relevant to effectuating that possible remedy.)

8. Clarence Finney to testify about:

- a. the searches referenced in Document Request Nos. 1 and 2 above;
- b. the policies, practices, procedures and/or actions referenced in Document Request No. 3 above; and
- c. the processing of the FOIA requests referenced in Document Request No. 4 above and subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1.

9. Sheryl L. Walter to testify about the processing of the FOIA requests referenced in Document Request No. 4 above and the subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1. *See* Document Request 4 above.

10. Gene Smilansky to testify about the processing of the FOIA requests referenced in Document Request No. 4 above and the subject matters discussed in the documents attached to Plaintiff's Notice of Revised Discovery Proposal as part of Exhibit 1. *See* Document Request 4 above.

It is hereby further **ORDERED** that:

The parties shall conduct discovery pursuant to the relevant Federal Rules of Civil Procedure. Plaintiff shall conclude discovery within 12 weeks of this Order and Defendant shall serve its complete response to Plaintiff's Document Request Nos. 1-4 above within 21 days of the Court's Order. In the event conflicts exist for scheduling third-party depositions, Plaintiff

will seek leave from the Court to conduct those depositions on specific proposed dates outside the approved discovery period that are mutually available to all parties and third-parties.

Dated:

U.S. District Court Judge

Cc: All counsel of record