

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 14-cv-1511 (ABJ)
v.	)	
	)	
U.S. DEPARTMENT OF STATE,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF PAUL J. ORFANEDES**

Paul J. Orfanedes declares and states as follows:

1. I am counsel to Plaintiff in the above-captioned matter and am familiar with Defendant's responses to Plaintiff's Freedom of Information Act ("FOIA") request in this matter and with Plaintiff's FOIA work generally.
2. The three versions of the email at issue in Defendant's Motion for Reconsideration and to Alter Judgment were produced to Plaintiff and/or identified to Plaintiff as being available on Defendant's website by letter dated June 3, 2015. A true and correct copy of Defendant's June 3, 2015 letter is attached hereto as Exhibit A.
3. Attached hereto as Exhibits B and C are true and correct copies of two FBI 302s released by the FBI following its investigation into Secretary Clinton's email practices. The 302s were requested by Plaintiff under FOIA and were subsequently made available on the FBI's website.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 1, 2017, in Washington, D.C.

  
Paul J. Orfanedes

**EXHIBIT A**  
**TO**  
**DECLARATION OF PAUL J. ORFANEDES**



United States Department of State

Washington, D.C. 20520

JUN 03 2015

Case No. F-2014-11262

Segments: S/ES-01, S/ES-02, S/ES-03,  
S/ES-04, S/ES-05, and S/ES-06

Ms. Kate Bailey  
Judicial Watch  
425 Third St. SW, Suite 800  
Washington, DC 20024

Dear Ms. Bailey:

I refer to our letter dated April 8, 2015, regarding the release of certain Department of State records under the Freedom of Information Act, 5 U.S.C. § 552.

The review has been completed for part 4 of the records retrieved from the Office of the Secretary, which consist of 377 documents responsive to your request. We have determined that 306 of these documents may be released in full, 62 may be released with excisions, and 9 must be withheld in full.

We have also conducted a search for records responsive to your request within the approximately 30,000 emails, comprising approximately 55,000 pages, that were provided to the Department by former Secretary of State Clinton. This search resulted in the retrieval of 68 records, which can be accessed at:

[http://foia.state.gov/Search/results.aspx?searchText=\\*&beginDate=20120911&endDate=20120915&publishedBeginDate=20150522&publishedEndDate=20150522&caseNumber=F-2015-04841](http://foia.state.gov/Search/results.aspx?searchText=*&beginDate=20120911&endDate=20120915&publishedBeginDate=20150522&publishedEndDate=20150522&caseNumber=F-2015-04841). This link, which has also been provided to you by email by the Department of Justice.

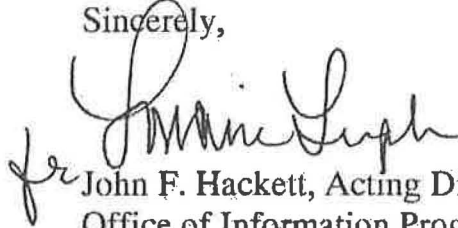
An enclosure explains Freedom of Information Act exemptions and other grounds for withholding material. Where we have made excisions, the applicable FOIA exemptions are marked on each document. In some cases, two or more exemptions may apply to the same document. For the nine documents withheld in full, all were withheld under FOIA Exemptions 1 and 5, 5 U.S.C. §§ 552 (b)(1) and (b)(5). All released material is enclosed.

Please be advised that this completes our processing of your request. If you have any questions, you may contact Assistant United States Attorney Robert Prince at

- 2 -

(202) 305-3654 or robert.prince@usdoj.gov. Please be sure to refer to the case number, shown above, in all communications about this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Hackett". The signature is written in a cursive, flowing style. To the left of the signature, the letters "for" are written in a smaller, simpler script.

John F. Hackett, Acting Director  
Office of Information Programs and Services

Enclosures: As stated.

**EXHIBIT B**

**TO**

**DECLARATION OF PAUL J. ORFANEDES**

FD-302a (Rev. 10-6-95)

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 10-05-2015 BY J37385T94 NSICC

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## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 07/30/2015

[redacted] Records Management Division, Records Information and Dissemination Section, Winchester, Virginia was interviewed at FBI Headquarters, Washington, D.C. After being advised of the identities of the interviewing Agents and the nature of the interview, [redacted] provided the following information:

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[redacted] resides at [redacted] telephone [redacted] has been employed in the Records Management Division for the past [redacted] years.

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Approximately 6 weeks ago, [redacted] received an email from [redacted] of the Department of State (STATE) Freedom of Information Act (FOIA) section. [redacted] email enclosed copies of 5 email communications from former Secretary of State HILLARY CLINTON's private email account which STATE believed may contain "FBI equities." STATE requested the FBI conduct an appropriate classification review of the emails prior to their scheduled FOIA public release. [redacted] advised these 5 emails were transmitted to him on a classified email system but were marked unclassified. [redacted] recognized that at least 1 of the emails appeared classified and forwarded same to the Counterterrorism Division (CTD) for classification review. These emails were reviewed by [redacted] and [redacted] of CTD. [redacted]

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[redacted] relayed these findings to STATE as per protocol.

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Approximately 1 week later, STATE's Office of Legal Counsel (OLC) contacted [redacted] and questioned the FBI's SECRET//NOFORN determination. [redacted] could not recall the name of the caller. According to OLC, [redacted] does not have an official government and therefore it believed the FBI could not classify a document based on the FBI caveat. OLC also advised that they, not the FBI, are the judge of potential harm to foreign governments and therefore the FBI did not have the right to classify a document based on those conditions. [redacted]

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as such remained classified at the SECRET//NOFORN level. [redacted] firmly

Investigation on 07/30/2015 at Washington, D.C.

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File # [redacted] Date dictated N/A

By SA [redacted] SA [redacted]

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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FD-302a (Rev. 10-6-95)

Continuation of FD-302 of [redacted] Interview of [redacted] On 07/30/2015, Page 2  
 believed, based on his position as an Original Classification Authority (OCA), that the email was classified properly and accurately.

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Shortly thereafter, [redacted] received a call from [redacted] of the International Operations Division (IOD) of the FBI, who "pressured" him to change the classified email to unclassified. [redacted] indicated he had been contacted by PATRICK KENNEDY, Undersecretary of State, who had asked his assistance in altering the email's classification in exchange for a "quid pro quo." [redacted] advised that, in exchange for marking the email unclassified, STATE would reciprocate by allowing the FBI to place more Agents in countries where they are presently forbidden.

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Following the above exchange, [redacted] was summoned to an "all agency" meeting at STATE to discuss matters pertaining to the classification review of pending CLINTON FOIA materials. [redacted] official from STATE, along with representatives from CIA, DIA and other government agencies were present. PATRICK KENNEDY presided over the meeting. During the conversation, a participant specifically asked whether any of the emails in question were classified. Making eye contact with [redacted] KENNEDY remarked, "Well, we'll see." [redacted] believed this was reference to the FBI's categorization of the SECRET//NOFORN email which KENNEDY was attempting to influence. In a private meeting with KENNEDY following the all agency meeting, KENNEDY asked [redacted] whether the FBI could "see their way to marking the email unclassified?" According to [redacted] KENNEDY spent the next 15 minutes debating the classification of the email and attempting to influence the FBI to change its markings. Since [redacted] continued to assert that the email was appropriately marked SECRET//NOFORN, KENNEDY asked who else in the FBI he could speak with on the matter. [redacted] referred KENNEDY to MICHAEL STEINBACH, Assistant Director of CTD.

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[redacted] was then present during a conference call involving KENNEDY and STEINBACH in which KENNEDY continued to pressure the FBI to change the classified markings on the email to unclassified. STEINBACH refused to do so. Prior to ending the conversation, KENNEDY asked whether the FBI or STATE would conduct the public statements on the matter. STEINBACH advised KENNEDY that the FBI would not comment publicly on the matter. The conference call ended and, according to [redacted] the Associated Press (AP) published the story within the hour. Former Secretary of State CLINTON appeared in front of the press

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FD-302a (Rev. 10-6-95)

Continuation of FD-302 of \_\_\_\_\_ Interview of \_\_\_\_\_ On 07/30/2015, Page 3  
shortly thereafter to deny having sent classified emails on her  
private email server.

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\_\_\_\_\_ believes STATE has an agenda which involves minimizing the  
classified nature of the CLINTON emails in order to protect STATE  
interests and those of CLINTON. Since the above incidents, \_\_\_\_\_ has  
received approximately 8 or 9 more emails from STATE involving FBI  
equities, 1 of which he believes may be classified SECRET//NOFORN.

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**EXHIBIT C**  
**TO**  
**DECLARATION OF PAUL J. ORFANEDES**

FD-302a (Rev. 10-6-95)

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ALL FBI INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-19-2016 BY J57385T94 NSICG

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 08/18/2015

[redacted] Office of Information Programs and Services (IPS), United States Department of State (STATE) Bureau of Administration, [redacted] Washington, D.C. 20520, office telephone [redacted] mobile telephone [redacted] email [redacted]@state.gov, date of birth [redacted] was interviewed in person by FBI Special Agents [redacted] and [redacted] [redacted] at FBI Headquarters, 935 Pennsylvania Avenue Northwest, Washington, D.C. 20535. After being advised of the identities of the interviewing Agents and the nature of the interview, [redacted] provided the following information:

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[redacted] began working for IPS in [redacted] 2015. Initially, IPS officials were told there were 14 bankers boxes of former Secretary of State Hillary CLINTON's emails at CLINTON's Friendship Heights office. Later, officials were told that the boxes would be picked up from Williams & Connolly, LLP. On or about December 5, 2014, IPS personnel picked up only 12 bankers boxes of CLINTON's emails from Williams & Connolly. [redacted] and other IPS officials were not sure if the boxes were consolidated or what could have happened to the two other boxes. The boxes were labeled with date ranges, which were accurate for the most part. Some of the documents were filed out of order. [redacted] opined the documents were pre-arranged differently than one would expect if the documents were simply printed out and then stacked into the boxes. IPS personnel provided copies of the documents to STATE's Bureau of Legislative Affairs, Office of the Legal Adviser, and the Office of Congressional and Public Affairs.

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Although, CLINTON was sworn in as Secretary of State in January 2009, IPS officials were unable to locate any of her emails from January-April 2009 in the documents provided by Williams & Connolly. [redacted] did not know whether CLINTON used a different email address at that time. A preliminary review of the documents did not occur until months later. IPS had to wait on the Office of Legal Counsel to provide an official determination as to whether the emails would be considered official STATE records. At some point, the determination was made that the emails would not be considered official STATE records.

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Based on the dates on the boxes, [redacted] opened the box with the Benghazi-related incidents first. There were sensitive Benghazi-related records, some records related to the National Archives and Records Administration, and some personal emails in that box. [redacted] Records and Archives [redacted] performed the records appraisal. [redacted] informed [redacted] there were some potential classified emails, including some from Sidney BLUMENTHAL, that appeared to have

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Investigation on 08/17/2015 at Washington, DC

File # [redacted] Date dictated N/A

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By SA [redacted]

SA [redacted]

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-302a (Rev. 10-6-95)

Continuation of FD-302 of [redacted] Interview of [redacted], On 08/17/2015, Page 2  
 been written by Tyler Drumheller, former Central Intelligence Agency (CIA) Division Chief, European Division. [redacted]

[redacted] as well as other emails that discussed various information related to various foreign governments.

Sometime around late January 2015 [redacted] gave a status brief about the emails to STATE officials Patrick KENNEDY, Under Secretary for Management, [redacted] Bureau of Administration, and [redacted] Global Information Services. KENNEDY and [redacted] were each provided with two binders full of email examples of documents [redacted] believed were possibly classified. [redacted] returned her binders to [redacted] but KENNEDY decided to keep his binders following the brief.

[redacted] was not aware of anyone in IPS or at STATE who received the rules or parameters the CLINTON team and/or Williams & Connolly used to segregate CLINTON's personal and official work emails. There were approximately 60,000 emails, which were reduced to about 30,000. IPS had requested [redacted] Legal Adviser, STATE to ask Williams & Connolly for the rules they used.

To date, [redacted] did not believe [redacted] received a response. [redacted] STATE Inspector General, was also trying to determine how Williams & Connolly performed their review and what basis they used in reducing the emails. Initially, Cheryl MILLS, former CLINTON Counselor and Chief of Staff, was the only CLINTON staff member to respond to a formal request by STATE for information pertaining to personal email and devices used to conduct official STATE business.

According to [redacted] in February 2015, [redacted] attorneys at STATE's Office of Congressional Affairs since approximately [redacted] and [redacted] along with attorneys from the Office of Legislative Affairs, performed their review of the 30,000 emails, from which 296 emails were located and produced responsive to requests from the U.S. House of Representatives Select Committee on Benghazi. The manual paper search was done using keywords "Libya," "Benghazi," and "security."

Prior to the formal FOIA review by IPS of the 296 emails, Congress threatened to release the 296 emails based on [redacted] input that her team had already coordinated with the appropriate STATE bureaus and inter-agency reviewing officials. However, [redacted] and her team did not work with the regular interagency reviewers familiar to [redacted] did not include [redacted] Office of Information Management or [redacted] Records Management Division, FBI. [redacted] believed [redacted] may have coordinated with DOJ, but not with the FBI.

In or around March and April 2015 [redacted] and IPS felt pressure by both Congress and internally from KENNEDY and [redacted] to quickly approve the 296 emails for release. Initially,

FD-302a (Rev. 10-6-95)

Continuation of FD-302 of [redacted] Interview of [redacted] On 08/17/2015, Page 3

[redacted] and his team were told to do a "light review with light redactions," but were later told by the Office of Legal Counsel to perform a regular FOIA review. [redacted] special team of senior reviewers, approximately 40 full-time equivalent reviewers, worked with the appropriate Bureaus on possible classified information and sent the proper referrals to the United States Intelligence Community (USIC) partners.

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[redacted] did not think [redacted] and the Office of Legislative Affairs attorneys had the appropriate training and experience to review, redact and produce emails responsive to Congressional inquiries and especially not expert enough to respond to FOIA requests. For starters [redacted] and her team performed their entire review, redacted what they did, and then copied the 296 emails to a .pdf file on an unclassified network. If any information was later found to be classified, then they would have not only corrupted every computer that touched that classified information, but they might have contributed to a loss of classified data. IPS always pushed their material to the SIPRNET network and used their "F2" enclave to perform their FOIA review before disseminating their products. Also, the 296 emails provided by [redacted] via .pdf included redactions done for CLINTON's privacy but unrelated to national security.

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[redacted] believed there was interference with the formal FOIA review process. Specifically, STATE's Near East Affairs Bureau upgraded several of CLINTON's emails to a classified level with a B(1) release exemption. [redacted] along with [redacted] attorney, Office of Legal Counsel called STATE's Near East Affairs Bureau and told them they could use a B(5) exemption on an upgraded email to protect it instead of the B(1) exemption. However, the use of the B(5) exemption, which is usually used for executive privilege-related information, was incorrect as the information actually was classified and related to national security, which would be a B(1) exemption.

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In or around March or April 2015, there was a meeting where [redacted] told [redacted] Information Services, [redacted] U.S. Department of Justice (DOJ), and [redacted] DOJ, that she had coordinated the review of the 296 emails with the appropriate STATE bureaus and inter-agencies. The emails "were already reviewed and there was nothing classified in them, so the FOIA review should go quickly." [redacted] was unsure why the FOIA review was taking so long.

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[redacted] again stressed [redacted] review and coordination were done with people unfamiliar to [redacted] and were not the normal points of contact that IPS used for other agencies. More importantly, although [redacted] and [redacted] thought their quick initial review showed none of the 296 emails were sensitive, following the formal FOIA review, one document had been upgraded to classified based on input from [redacted] and [redacted]. There were other documents IPS recommended for upgrade, including one specifically related to the Department of Defense's United States Central Command (CENTCOM), and others that were still in the referral stage, including emails that have FBI and CIA equities involved that originated from BLUMENTHAL.

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FD-302a (Rev. 10-6-95)

Continuation of FD-302 of [redacted] Interview of [redacted] On 08/17/2015, Page 4

[redacted] did not know why he and IPS were not part of the initial Congressional review for the 296 Benghazi-related emails, like they had been for past Congressional inquiries. [redacted] was cut out of the loop for the materials initially sent to Congress and had no idea what kind of review [redacted] and her team performed. [redacted] and [redacted] seemed to have been placed in their specific positions by top STATE officials; they appeared to have a very narrow focus on all CLINTON-related items, and were put in positions that were not advertised.

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In early May 2015, KENNEDY called an interagency meeting regarding the scheduled release of all the CLINTON-related emails by the January 15, 2016 deadline and asked for quick turnarounds on any future requests. People in attendance included [redacted] representatives from White House Counsel, CIA, FBI, Office of the Secretary of Defense (OSD), Director of National Intelligence (DNI) and the National Security Council (NSC).

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Immediately following that meeting, KENNEDY held a closed-door meeting with [redacted] and [redacted] DOJ's Office of Information Programs where KENNEDY pointedly asked [redacted] to change the FBI's classification determination regarding one of CLINTON's emails, which the FBI considered classified. The email was related to FBI counter-terrorism operations.

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KENNEDY called [redacted] directly on one occasion. The purpose of that call was to ask [redacted] questions regarding pressure from the Office of the Inspector General of the Intelligence Community (ICIG) to complete the review of the approximately 30,000 emails. Specifically, KENNEDY wanted to know if there was precedent to have outside reviewers help STATE with the FOIA process. At that time [redacted] was unaware of STATE IG's and ICIG's June 19, 2015 joint recommendation to STATE regarding the FOIA review process. [redacted] ICIG, offered [redacted] and IPS extra reviewers from the intelligence community to help review the 30,000 emails. However, many of those reviewing officials arrived untrained to formally review items. After the initial training, those reviewers became instrumental to the review process.

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[redacted] had not felt as much pressure regarding the review and release of the 30,000 emails as with the 296 Benghazi-related emails. [redacted]

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[redacted] Instead of pressure, it felt more like curiosity as to the raw numbers of emails already reviewed, upgraded from unclassified to classified, referred to outside agencies, and/or released publicly. To date, approximately 1,600 referrals were made to USIC partners. Many of those emails discussed foreign governments and their leaders along with various sensitive telephone calls. Other emails existed that would later be referred to the USIC. Those emails included emails from STATE personnel discussing information lost as a result of the "Wikileaks" scandal.

Some material from the 30,000 emails, though unmarked as such, were definitely classified back in 2009-2012 and still remained classified. On the other hand, it was true some material (in general, not specific to the 30,000 emails) could have been previously classified, but were later downgraded. An



FD-302a (Rev. 10-6-95)

Continuation of FD-302 of Interview of [REDACTED], On 08/17/2015, Page 5  
 example would be CLINTON's travel schedule or security-related information based on specific times and places. It was a very large security concern for IPS when they heard some STATE employees assumed all documents on unclassified system were unclassified, based on being on an unclassified system and having no portion markings.

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One email that was upgraded from the 30,000 emails was an email exchange between CLINTON and [REDACTED] former [REDACTED] where both individuals used their personal email addresses to discuss matters related to Russia. Despite this, [REDACTED] responded to KENNEDY's request for all STATE-related personal emails with a letter that stated [REDACTED] had no STATE-related emails in his personal email account.

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STATE was normally able to complete classification upgrades very quickly. The upgrade would happen after STATE bureaus and other agencies determined, 1) how the information was obtained; (2) what the information was; (3) based on current global events/situations; or (4) because the information was, initially, improperly marked as unclassified.

[REDACTED] heard the argument that some of CLINTON's emails were unclassified back in the 2009-2012 timeframe when they were initiated, but were later classified due to various circumstances. It was very rare for something that was actually unclassified to become classified years after the fact. [REDACTED] National Archives would be a good point of contact for knowledge on the upgrading process in general.

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On or about August 10, 2015, [REDACTED] from Office of the Secretary of Defense (OSD) called [REDACTED] and told her CENTCOM records showed approximately 1,000 work-related emails between CLINTON's personal email and General David PETRAEUS, former Commander of CENTCOM and former Director of the CIA. Most of those 1,000 emails were not believed to be included in the 30,000 emails that IPS was reviewing. Out of the 30,000 emails, IPS only had a few emails from or related to PETRAEUS, as well as a few related to Leon PANETTA, former Secretary of Defense. There were a lot of emails to/from Denis MCDONOUGH, former Deputy National Security Advisor and current White House Chief of Staff.

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[REDACTED] described Jacob SULLIVAN and Cheryl MILLS as "gatekeepers" for sending CLINTON emails/material; they would filter or review most items that CLINTON would receive. [REDACTED] recommended the FBI talk to his boss, [REDACTED] specifically about individuals at STATE who hold a weekly meeting about Congressional records production and the FOIA process as well as where [REDACTED] felt pressure came from regarding upgrading any of the 296 Benghazi-related emails. [REDACTED] recommended the FBI should talk with [REDACTED] regarding the alleged 1,000 emails between CLINTON and PETRAEUS.

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