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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

RELEASE IN FULL

KOLAN L. DAVIS, Chief Counsel and Staff Director
KATHLEEN J. LUDWIG, Democratic Chief Counsel and Staff Director

January 28, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable John F. Kerry
Secretary of State
Office of the Secretary
United States Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Kerry:

On January 8, 2015, the Department of State released, pursuant to the Freedom of Information Act (FOIA), a batch of Secretary Clinton's emails that included a disturbing June 2011 email exchange between Secretary Clinton and Jake Sullivan, her then-Deputy Chief of Staff. The exchange appears to show, in response to difficulties sending a secure fax, Secretary Clinton instructing a subordinate to remove the headings from what are presumably classified talking points and send them to her in an unsecure manner. Obviously, if the talking points were classified, they should have been sent via secure systems.¹

On January 10, 2015, according to a *Wall Street Journal* article, the Department said it "has found no indication that the document in question was sent to Mrs. Clinton using nonsecure fax or email" but an unnamed Department official stated "there was a secure fax transmission to Secretary Clinton shortly after [the email exchange with Jake Sullivan]."² Because the document's subject line was redacted, the subject matter of the talking points was unclear from the Department's FOIA release. The *Associated Press*, however, initially reported that the talking points related to a conversation Secretary Clinton had scheduled with a senator later that day and the subject included a Russian accountant, Sergei Magnitsky.³

¹ See 5 FAM 533, *Classified Fax Machines*; Executive Order 13526, *Classified National Security Information*, Sec. 4.1(g).

² Harriet Torry, "Hillary Clinton Says 'Nonpaper' Email a Nonissue," *THE WALL STREET JOURNAL* (Jan. 10, 2016). Available at <http://blogs.wsj.com/washwire/2016/01/10/hillary-clinton-says-nonpaper-email-a-nonissue/>

³ Lisa Lerer and Bradley Klapper, "Clinton's Request For Secure Fax Plan B Sparks Accusations," *ASSOCIATED PRESS* (Jan. 8, 2016). Available at: <http://bigstoryqa.ap.org/article/94a6f4249b9c44a192bfff5a401787739/state-dept-misses-court-deadline-clinton-emails>. However, the AP later updated the story to remove the assertion that the talking points concerned the call with Senator Cardin. See the updated version available at <http://www.bigstory.ap.org/article/94a6f4249b9c44a192bfff5a401787739/state-dept-misses-court-deadline-clinton-emails>.

A few hours after Secretary Clinton's instructions to Mr. Sullivan, Ms. Huma Abedin sent an email containing classified information to Secretary Clinton. The subject line of that email was "D'Amato," but the body of the email is almost entirely redacted as classified. However, it appears that Secretary Clinton had "asked for background info[rmation]" on a call related to that subject. It is unclear whether this email was related to the earlier attempt to securely fax talking points to the Secretary.

On January 8, 2015, my staff contacted yours to request an unredacted copy of the talking points email exchange as well as the "talking points" referenced in it. On January 11, 2015, in light of the Department's statements in the *Wall Street Journal* article, my staff requested that the Department confirm whether the talking points referenced in the email were, in fact, sent securely. Rather than providing the information informally, the Department requested an official Committee letter.

Accordingly, please respond to the following:

1. The talking points email includes numerous FOIA redactions under the b(5) exemption. The Department of Justice has noted that the three primary privileges incorporated into Exemption 5 include the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.⁴ Please indicate which privileges are at issue in the talking points email.⁵
2. Please provide an unredacted version of the talking points email and the D'Amato email.⁶
3. Please provide an unredacted copy of the talking points referenced in the talking points email.
4. Did the Department keep records of all nonsecure faxes or emails sent to or received by Secretary Clinton? If so, please provide the records for June 17, 2011.
5. Did the Department keep records of all secure faxes or emails sent to or received by Secretary Clinton? If so, please provide the records for June 17, 2011.
6. Please provide a copy of the secure fax transmission sent to Secretary Clinton shortly after the email exchange with Jake Sullivan, as mentioned in the *Wall Street Journal* and attributed to an unnamed Department official.

⁴ Department of Justice Guide to the Freedom of Information Act, "Exemption 5," (2009). Available at http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption5_1.pdf

⁵ Attachment A

⁶ Attachment A and B, respectively.

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Please number your responses according to their corresponding questions and respond by February 11, 2016. Please send classified information under separate cover, via the Office of Senate Security. If you have any questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225. Thank you for your cooperation in this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Grassley". The signature is written in a cursive, slightly stylized font.

Charles E. Grassley
Chairman
Committee on the Judiciary