

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

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

**PLAINTIFF’S COMBINED REPLY IN SUPPORT OF REQUEST FOR HILLARY
RODHAM CLINTON’S AND CHERYL D. MILLS’ DEPOSITIONS**

Plaintiff Judicial Watch, Inc., pursuant to the Court’s August 22, 2019 Order hereby files its combined Reply in support of its Request for the depositions of Hillary Rodham Clinton (“Secretary Clinton”) and Cheryl D. Mills (“Ms. Mills”).¹

The Court described this case as “one of the gravest modern offenses to government transparency.” Dec. 6, 2016 Memo. Opinion, (“Dec. 6, 2016 Memo.”) (ECF 54) at 2. Grave misconduct was permitted at the State Department– and Secretary Clinton was the key player. Her actions and motives were the impetus to the doubt and questions raised directly in this case: “Did Hillary Clinton use her private email as Secretary of State to thwart [the Freedom of Information Act (FOIA)]? Was the State Department’s attempt to settle this FOIA case in 2014 an effort to avoid searching – and disclosing the existence of – Clinton’s missing emails? And has State ever adequately searched for records in this case?” *Id.* Still, those actions and motives

¹ Non-party individuals Cheryl Mills and Hillary Clinton submitted separate objections to Plaintiff’s request for their depositions. ECF Docs. 142 and 143 respectively. In the interest of efficiency and judicial economy, Plaintiff addresses both non-party individuals’ objections in this combined Reply.

remain unclear and Secretary Clinton continues to assert there is nothing more for her to say yet, she continues to make light of the legal issues caused by her actions.²

SECRETARY CLINTON’S DEPOSITION IS NECESSARY, NOT CUMULATIVE

The Court permitted the rare measure of discovery in this FOIA case to gain “[a]n understanding of the facts and circumstances surrounding Secretary Clinton’s extraordinary and exclusive use of her “clintonemail.com” account to conduct official government business...” March 29, 2016 Memo. & Order (“March 29, 2016 Memo.”) (ECF 39) at 1. Plaintiff has attempted to obtain as much evidence as possible from less burdensome and intrusive means including taking depositions of State Department officials, culling information from non-judicial inquiries and investigations, and seeking clarification through written discovery. However, significant questions remain that only Secretary Clinton can answer. It is critical that Plaintiff takes Secretary Clinton’s testimony directly with the ability to ask follow-up questions, to explore and clarify her responses, and to fully understand the answers provided for the record. She is the only person who can explain her own state of mind regarding “convenience,” understanding and knowledge of federal records responsibilities, and communication about the clintonemail.com system. Interrogatories are inefficient and inadequate in this case.³ The scope of discovery permitted in this case covers broader subject matters than the preceding litigation before Judge Sullivan and Secretary Clinton’s own sworn testimony, rather than written answers

² Even as late as last week. *See* [Hillary Clinton trolls Trump after report of State Dept probe into email server: 'But my emails' \(last accessed on October 3, 2019\)](#); *See also* ['Found my Emails!' \(last accessed on October 3, 2019\)](#).

³ Secretary Clinton’s argument that Plaintiff did not complain about Secretary Clinton’s interrogatory answers in the case before Judge Sullivan is misleading. In fact, Secretary Clinton answered certain questions only after Plaintiff was forced to move to compel and the Court agreed, in part, with Plaintiff’s request.

carefully drafted by her attorneys, is essential to establish a *complete* public record of her actions as the head of the agency and the management of her federal records at the State Department.

Secretary Clinton's deposition is necessary, not cumulative.

Convenience is the only answer Secretary Clinton has provided publicly, to the Federal Bureau of Investigation ("FBI"), and to Congress to the question about why she used her personal email. Mills Deposition, 13-1363 (ECF No. 82); 13-1363 Doc 102, Ex. B (ECF 102-2); Ex. D (ECF 102-4); 14-1242 Hillary Clinton Responses to Interrogatories (ECF 143-1) Nos. 2, 5, 7. But that is where the response ends. What is meant by "convenience" is never made clear. What was convenient about using her private server? Why was it convenient? Why was the agency's system not convenient to switch to? Judicial Watch should be permitted to directly question Secretary Clinton about her motives, thoughts, and efforts regarding the "convenience" she relies upon in justifying her use of a secret, private server and email address in direct violation of federal records laws and State Department policies.

State Department Federal Records Officer Tasha Thian ("Ms. Thian") testified that it was inconceivable that Secretary Clinton was not aware of her obligations regarding federal records and email management. Deposition of Tasha Thian ("Thian Depo.") 178:15-179:9 *attached hereto as Exhibit A*. ("I don't understand why she would come up with this statements that she was allowed – or how she would save record email by emailing another employee's account. She had resources there aplenty. So it just doesn't make sense to me.") Even before taking office, Secretary Clinton "knew we had a process." Thian Depo 44:5-6. In December 2008 or January 2009, Secretary Clinton sent a representative to inquire on her behalf about retaining papers that she wanted to bring with her upon departure from the agency. Thian Depo 42:6-22; 43:1-22; 44:1-8. Ms. Thian, and Clarence Finney ("Mr. Finney"), Deputy Director of the Office

of Correspondence and Records within the Executive Secretariat, briefed Secretary Clinton's representative on the departure process and departing officials procedures, and provided the departing officials notice and government briefing booklet which contained information about records management responsibilities and obligations, including email records. Thian Depo 44:12-18; 57; 74:6-76:12; 86-94.

Ms. Thian also testified that throughout Secretary Clinton's tenure, State Department held annual Records Management Workshops. Thian Depo 67:6-22. Members of Secretary Clinton's office always attended the workshops and Ms. Thian recalls seeing Huma Abedin, Secretary Clinton's Deputy Chief of Staff, attend at least one workshop held in the Secretary's own conference room, just feet from her office. Thian Depo 70:13-71:5, 128:7-13.

Additionally, at the start of Secretary Clinton's tenure, an extensive briefing for FOIA and records management was specifically arranged for the Secretary's office. Thian Depo 132:13-135:22. Staff and attendees at the training workshops and additional briefing were responsible for taking the information on federal records management and compliance, including email records, back to brief the principals. Thian Depo. 82:19-20. Questions about how the Secretary received her briefings about the information gathered at these workshops are relevant and deserve answers.

During her tenure, Secretary Clinton worked directly with former Secretary Kissinger on releasing his own federal records. Thian Depo 143:19-22; 144-147. Ms. Thian testified that process was another example where Secretary Clinton would have been made aware of normal and proper federal records procedures and provided an illustration of the problems and consequences of removing State Department records. Thian Depo. 146:14-147:4.

And finally, at the end of Secretary Clinton's tenure, there was additional briefing and meetings for all departing officials and their staff to make sure each official knew and understood what their recordkeeping responsibilities were. Deposition of Clarence Finney ("Finney Depo") 182:7-17; 186:1-17 *attached hereto as Exhibit B*. Part of this process was a review by records management officers of any material the individual wished to remove from the State Department. Thian Depo. 86:13-87:8; Finney Depo. 193:13-5. This was recorded and acknowledged on a Form 1904. Thian Depo. Ex. 4 *attached hereto as Exhibit C*. It was here, on Form 1904 under the heading "Electronic Files," that Secretary Clinton should have listed her clintonemail.com emails. Thian Depo. 92:5-21. At the very least, she should have informed Mr. Finney about the clintonemail.com emails that were not in the State Department system at that time. Thian Depo. 93:9-12. Still no one told the records management officers about Secretary Clinton's private server and personal email address that she used for official State Department work. Even if Secretary Clinton believed her federal record emails were adequately preserved through her "practice" (which they weren't), why wasn't it raised or acknowledged during the departing officials procedure?

According to Ms. Thian's testimony, there are at least six occasions Secretary Clinton was or should have been fully informed of federal records management, including email records, and compliance responsibilities. Yet Secretary Clinton's actual understanding of her obligations with respect to official State Department records is completely absent from the record. Ms. Abedin previously testified that Judicial Watch "would have to ask Mrs. Clinton" herself about whether the Secretary understood FOIA applied to the clintonemail.com system. Abedin Deposition ("Abedin Depo") 115:17-116:3 (13-1363 ECF 129). Ms. Abedin also testified that she didn't know how Secretary Clinton managed her inbox during her tenure as Secretary of

State or whether she deleted work-related emails. Abedin Depo 121:12-15 (13-1363 ECF 129). Similarly, when asked if Secretary Clinton deleted any federal records in her emails, Ms. Mills stated “I don’t know if she did or she didn’t.” Mills Depo 242:1-7 (13-1363 ECF 126).

Secretary Clinton is the only one that can explain and describe her knowledge and understanding about whether federal recordkeeping laws and FOIA applied to her emails and handling of these emails during her tenure. Plaintiff should be able to question Secretary Clinton directly regarding the various trainings and briefings she received from her staff on FOIA and federal records management compliance, the meetings she participated in that specifically addressed federal recordkeeping responsibilities, as well as her handling of the emails prior to her departure from the State Department.

Secretary Clinton also publicly stated and previously answered under oath in response to Plaintiff’s interrogatory that she believed that her emails should have been preserved by the “normal State Department processes for email retention.” Clinton Ints. (ECF 143-1) No. 14. However, her understanding of the “normal State Department processes for email retention” has never been explained. Plaintiff should be permitted to explore her understanding of this process through direct questioning with the opportunity to follow up and clarify as necessary. What was the “normal process” as she understood it? Who told her? When?

Secretary Clinton asserts that it was her “practice” to email State officials on state.gov emails in order for State to capture her email records and she understood that those emails were preserved in the Department’s recordkeeping systems and available to the Department in conducting searches in response to FOIA requests. Clinton Ints. Nos. 10, 13 (ECF 143-1). Ms. Thian testified that no such system existed nor was it an appropriate way to capture Secretary Clinton’s record emails. Thian Depo 172; 173:1-8. Again, follow-up questions on this repeated

representation that her “practice” preserved her emails in the State Department system is crucial. Why did she believe this practice was adequate? Who told her? Who else within her office engaged in this or a similar practice? What was her understanding about email preservation for FOIA searches and State Department record management? Who did she tell about this “normal practice” to ensure federal records, including emails, were preserved – in particular, upon her departure from the State Department? Especially considering that Mr. Finney, the State Department official responsible for the day-to-day management of the Secretary’s records, including FOIA responses for those records, has testified that he had no knowledge about her use of the clintonemail.com system. Deposition of Karin Lang (“Lang Depo”) 165:19-166:1 (13-1363 ECF 171). Nor did Mr. Finney know about her alleged practice of corresponding with State Department officials on their State Department email accounts. Lang Depo 97:12-98:4 (13-1363 ECF 171).

Secretary Clinton has also stated that her use of a personal email account was “allowed,” although she stated “she did not explicitly request permission to use a private server or email address.” *See* Hillary Clinton Opposition to Deposition (“Clinton Opp.”) ECF 143, Ex. C at 4, 10, Ex. H at 3-4 at 11. Ms. Thian, however, testified that Secretary Clinton’s email use was neither allowed nor approved at the State Department. Thian Depo 171:11-172:8. Clarification about the Secretary’s previous statements can only be achieved by asking follow-up questions at her deposition.

Furthermore, in direct contradiction to Secretary Clinton’s public statements and representation that “everyone at State knew she had a private email address because it was displayed to anyone with whom she exchanged emails...” Clinton Opp. (ECF 143) Ex. C at 4, 10, Plaintiff, only two weeks ago, received an email exchange produced by Defendant in

unredacted form showing top State Department officials warning about releasing the Secretary's personal email address in 2010 because "she guards it pretty closely."⁴ *Attached hereto as Exhibit D (Dec. 24, 2010 Email)*. On December 24, 2010, Daniel Baer, an Obama State Department deputy assistant secretary of state, wrote to Michael Posner, a then-assistant secretary of state about Clinton's private email address:

Baer: "Be careful, you just gave the secretary's personal email address to a bunch of folks ..."

Posner answers: "Should I say don't forward? Did not notice"

Baer responds: "Yeah-I just know that she guards it pretty closely"

Mr. Posner had forwarded Clinton's email address, which was contained in an email sent to State Department senior leadership, about WikiLeaks. *Id.*

Ms. Thian also testified that she believed the truth about the private email server usage was intentionally withheld from records managers by multiple staff members so record managers would not have access to her emails. Thian Depo. 152:3-8; 165:11-15. She stated that Secretary Clinton's email server would not have been approved: "[W]e wouldn't let her have the system at all. She wouldn't be able to use email in such a – in such a way as a personal server and that type of thing." Thian Depo. 165:3-6. According to Ms. Thian, Secretary Clinton's use of her

⁴ This email chain appears to be the email described by John F. Hackett during his deposition testimony that he reviewed in December 2013 or January 2014 that gave rise to further inquiries within IPS and the Office of the Legal Advisor about Secretary Clinton's email use at the State Department. Pltf. Status Report (ECF No. 131), p. 3, ¶ 3(e) and pp. 16-17, ¶ 5(C)(iii) It also appears the State Department produced this email in 2016 in redacted form, redacting Secretary Clinton's personal email address and the discussion about Secretary Clinton wanting to keep her email address closely guarded under the privacy and deliberative process privileges. See <https://www.judicialwatch.org/press-releases/judicial-watch-court-forces-release-of-clinton-wikileaks-discussion-email-that-confirms-state-department-knew-about-her-email-account/> (last accessed October 3, 2019), for a copy of redacted document, see <https://www.judicialwatch.org/documents/jw-v-state-hrc-2016-redacted-wikileaks-email-01242/> (last accessed October 3, 2019).

private server and email address was in violation of federal records regulations and State Department policies. Thian Depo. 165:16-20.

Despite significant discovery taken in this case and the case that was pending before Judge Sullivan, there is no explanation or insight as to why records management officials were not advised about official, government records on the clintonemail.com system at any time during her tenure, especially at the time of her departure. Further inquiry about what discussions Secretary Clinton had with State Department officials and why she believes that the State Department approved her use of the clintonemail.com system to conduct official government business is necessary.

Secretary Clinton cannot rely on her statements in the “extensive public record” to support her contention that the record is complete and any further information she has is irrelevant, as she argues in her opposition. Clinton Opp. (ECF 143) at 1, 12. As the Court articulated so clearly, “[n]ow we know more, but we have even more questions than answers.” August 22, 2019 Hearing Transcript (ECF 137) 47:24-25. In order to reach an end to this inquiry, it is necessary to get answers and explanations from the one person who holds the information the record is lacking. The court should permit Plaintiff to take Secretary Clinton’s direct testimony with the ability to ask follow-up questions, and to explore and understand the answers provided. This cannot be accomplished through interrogatory responses prepared for a witness by a lawyer. Secretary Clinton’s deposition is necessary to complete the record.

Furthermore, Judicial Watch has not acknowledged that Secretary Clinton has no knowledge about the second and third topics of discovery, as Secretary Clinton asserts in her opposition. Clinton Opp. (ECF 143) at 1, 12. In fact, Secretary Clinton has discoverable information relating to all three topics of discovery, as well as what she knew about the Benghazi

attack before Susan Rice's television appearances, and can certainly shed light on each.

Secretary Clinton has knowledge about her own, as well as her representatives' communications with State about her State Department emails when Defendant attempted to settle this case with Judicial Watch.

Secretary Clinton also has direct knowledge about who she communicated with – at State and outside the agency - about the Benghazi attacks and what she and State were trying to hide from public release prior to Ambassador Susan Rice's television appearances on September 16, 2012. This information is vital to determining the adequacy of the search for records at issue in Plaintiff's FOIA request. It is therefore necessary, not cumulative, to directly question Secretary Clinton with the opportunity to follow-up and clarify her answers on all three discovery topics.

CHERYL D. MILLS DEPOSITION IS NECESSARY AND NOT CUMULATIVE

Plaintiff should be permitted to depose Ms. Mills in this case on all areas of discovery. Although Plaintiff previously deposed Ms. Mills in the case before Judge Sullivan, the issues in this case are broader and significant facts have been discovered that require further inquiry with Ms. Mills. When Plaintiff initially deposed Ms. Mills, more than three years ago, Judicial Watch was only able to ask general questions regarding concerns raised by anyone about federal records retention in connection with Secretary Clinton's email. Judicial Watch did not have much of the information that has since been discovered to specifically question Ms. Mills about.

For example, Ms. Mills argues that she previously testified that she does not recall conversations with Pagliano until after she left State. Mills Objections to Deposition ("Mills Obj.") (ECF 142) at 2. However, the FBI interview notes from former Clinton Campaign and State Department IT Specialist Bryan Pagliano describe a conversation with Ms. Mills about Secretary Clinton's use of a private email server and federal records retention concerns in late

2009 or early 2010. *See* Plaintiff's Proposed Discovery Plan, Ex. A at p. 4 (ECF 62-1). Plaintiff should be able to ask Ms. Mills specific questions about this. Also, at the time of Ms. Mills deposition, State had wrongfully withheld the information that State officials, including Heather Samuelson, who worked for Ms. Mills, were in contact with the White House about Citizens for Responsible Ethics in Washington's (CREW) December 2012 FOIA request pertaining to Secretary Clinton's emails. Judicial Watch should be given the opportunity to ask questions of Ms. Mills about any communications she had with the White House about the FOIA request.

Ms. Mills assertion that "[t]he fact that some additional information has been made available to Judicial Watch does not justify a second deposition where Judicial Watch's interests have not changed" disregards the fact that the lack of relevant information revealed only through this discovery process was the result of State Department and State officials' wrongful concealment of the information initially. Inquiry about the specific facts discovered and directly related to the permitted discovery topics in this case is not "unreasonably cumulative or duplicative" and cannot "be obtained from some other source". FRCP 26(b)(2)(C).

Ms. Mills also asserts that she has no relevant testimony to offer regarding the second prong of discovery concerning "whether the State Department's intent to settle this case in late 2014 and early 2015 amounted to bad faith" because she had left the State Department before this case was even filed. Mills Obj. (ECF 142) at 4-5. Again, this argument is nonsensical, and State Department was unsuccessful in avoiding the depositions of State Department officials who left the agency before 2014. Ms. Mills knew about Secretary Clinton's emails and communication with State at the time of both this FOIA request and State's attempt to settle this matter. She can certainly provide information about when State first reached out regarding

Secretary Clinton's emails and who she was in contact with at the time State was attempting to settle this lawsuit with Judicial Watch.

At the time Ms. Mills was deposed more than three years ago, Plaintiff also did not know about the deletion of approximately 30,000 emails of Secretary Clinton while this FOIA lawsuit was pending and a Congressional subpoena had been already served on Secretary Clinton for her records related to Benghazi. Ms. Mills was directly involved in the review process of Secretary Clinton's emails and questions about this are relevant here.

This case also addresses Ms. Mills' own records, which were not at issue in the case before Judge Sullivan. Although Ms. Mills inquired about the review process prior to her departure from the State Department, Ms. Thian testified that she does not recall that Mills' emails were indeed reviewed prior to her departure. Thian Depo 101:1-22; 102:1-22; 103:1-3. Similar to Secretary Clinton, Ms. Mills was also asked to return any federal records in her possession, which she did in 2015. Plaintiff should be able to question Ms. Mills about the review process of her own emails prior to their return to the State Department and whether any of her emails have been deleted since leaving the State Department. Ms. Mills also has direct knowledge of who she communicated with at State and other agencies about the Benghazi attacks. All of these areas of inquiry are relevant to the adequacy of Defendant's search in this case.

SUBSTANTIVE TALKING POINTS

Plaintiff also requests it be permitted to question Ms. Mills and Secretary Clinton about the preparation of talking points for former U.N. Ambassador Susan Rice's September 16, 2012 media appearances, the advance dissemination or discussion of those talking points, the aftermath of Rice's appearances, and the Department's evolving understanding of the Benghazi

attack. Not only will answering such questions help pinpoint whether the State Department adequately searched for records responsive to Plaintiff's request, but, given the extraordinary circumstances of this case, it will help to preserve State's integrity and "reassure the American people their government remains committed to transparency and the rule of law." Dec. 6, 2018 Memo. at p. 8 (ECF No. 54).

Contrary to Secretary Clinton's claims, the substantive documents do fall within the issues on which the Court ordered discovery and are directly related to State's potential bad faith and search for documents. *See* Clinton Opp. (ECF 143) at 6. In fact, the Court specifically addressed the relevancy of the substance of the documents to the permitted discovery here:

Yet Rice's talking points and State's understanding of the attack play an unavoidably central role in this case: information about the points' development and content, as well as their discussion and dissemination before and after Rice's appearances could reveal extant unsearched, relevant records; State's role in the points' content and development could shed light on Clinton's motives for shielding her emails from FOIA requestors or on State's reluctance to search her emails.

Jan. 15, 2019 Memo. (ECF 65) at 11-12. *See also* Dec. 6, 2016 Memo (ECF 54) at 7-8 ("Did State know Clinton deemed the Benghazi attack terrorism hours after it happened, contradicting the Obama Administration's subsequent claim of a protest-gone-awry?. Did State know Clinton sent or received top-secret information through her private email? Did the Department merely fear what might be found? Or was State's bungling just the unfortunate result of bureaucratic red tape and a failure to communicate?") Plaintiff should be permitted to question both Secretary Clinton and Ms. Mills on these issues.

CONCLUSION

For the reasons set forth in Plaintiff's August 21, 2019 Status Report and the additional reasons stated above, Plaintiff respectfully requests that the Court authorize Plaintiff to depose

Hillary Rodham Clinton and Cheryl D. Mills on the discovery topics outlined in its January 15, 2019 Memorandum & Order including (1) whether Secretary Clinton intentionally attempted to evade FOIA by using a private email while Secretary of State; (2) whether State's efforts to settle this case in late 2014 and early 2015 amounted to bad faith; and (3) whether State adequately searched for records responsive to Judicial Watch's FOIA request. *See* Jan. 15, 2019 Memo. (ECF 65) at 1.

As well, Plaintiff respectfully requests the Court permit Plaintiff to depose Hillary Rodham Clinton and Cheryl D. Mills about the preparation of talking points for former U.N. Ambassador Susan Rice's September 16, 2012 media appearances, the advance dissemination or discussion of those talking points, the aftermath of Ambassador Rice's appearances, and the State Department's evolving understanding of the Benghazi attack, also consistent with the January 15, 2019 Memorandum & Order. *Id.* at (ECF 65) at 11-12.

Dated: October 3, 2019

Respectfully submitted,

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