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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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January 31, 2018

The Honorable Rod J. Rosenstein
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Acting Attorney General Rosenstein:

The Committee on Homeland Security and Governmental Affairs is continuing its oversight of the Federal Bureau of Investigation (FBI) and the FBI's investigation of classified information on former Secretary of State Hillary Clinton's private email server. On January 19, 2018, the Department of Justice (DOJ) produced to the Committee 384 pages of text messages exchanged between FBI officials Lisa Page and Peter Strzok.¹ I write to request additional information about FBI records connected to this investigation.

According to DOJ's cover letter accompanying the documents, the FBI failed to preserve text messages between Ms. Page and Mr. Strzok between approximately December 14, 2016, and May 17, 2017.² The Department later reported that phones of nearly ten percent of the FBI's 35,000 employees experienced similar issues.³ On January 25, 2018, the Department of Justice Office of Inspector General (OIG) notified the Committee that it had "succeeded in using forensic tools to recover" the lost text messages exchanged between Mr. Strzok and Ms. Page, and that the OIG would provide the messages to the Department.⁴ The OIG noted it had no objection to the Department providing the recovered messages to Congress.⁵

According to text messages produced to the Committee, Ms. Page and Mr. Strzok make references to communicating with other FBI employees via text message, phone call, email, and voice mail.⁶ Additional text messages suggest that FBI officials used non-official email accounts

¹ Letter from Stephen Boyd, Assistant Attorney Gen. for Legislative Affairs, Dep't of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs, Jan. 19, 2018. The letter also included 384 pages of text messages between Mr. Strzok and Ms. Page.

² *Id.*

³ Jake Gibson, *Thousands of FBI cellphones affected by glitch that lost Strzok-Page texts, officials say*, Fox News, Jan. 24, 2018, <http://www.foxnews.com/politics/2018/01/24/thousands-fbi-cellphones-affected-by-glitch-that-lost-strzok-page-texts-officials-say.html>.

⁴ Letter from Michael E. Horowitz, Inspector Gen., Dep't of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs, and Sen. Charles Grassley, Chairman, S. Comm. on Judiciary, Jan. 25, 2018.

⁵ *Id.*

⁶ See Text messages between Peter Strzok and Lisa Page (June 10, 2016) ("Okay, let me text andy."). [DOJ-PROD-148]; text messages between Peter Strzok and Lisa Page (May 15, 2016) ("[Redacted] just texted. Dd flying with the DAG on the bird. So he'll be back for mye.") [DOJ-PROD-129]; text messages between Peter Strzok and Lisa Page (Jan. 28, 2016) ("And Andy just texted me the following...") [DOJ-PROD-50]; text message from Lisa Page to

and messaging programs to communicate about official business. For example, Ms. Page and Mr. Strzok wrote on April 10, 2016:

Mr. Strzok: [Redacted] I find I'm increasingly profoundly bothered by JB's⁷ [*sic*] call and the lack of ANY heads up. Deeply. It was wrong given what I had already been asked to do. Gonna sleep on it and see where I am in the morning.

Mr. Strzok: Because you know where I was on Thursday or Friday night – when I was complaining about everyone expecting me to deliver the hard message while they vacillated in discussing with their counterparts. About how my sense of justness and character was at odds with waiting until Sat to say something. And rightfully, you point out stop being so prima donna-ish and just do it. And I do. And then I find out an hour later that in addition to what I was asked to do, JB went to counsel and had the discussion he did. And I'm the one facing the music. From some who I have known for a long time. Nobody else pays the price. Nobody else will have the same straight hard discussion. Yet, I'm the only one who violated his sense of integrity to swallow hard and deliver the message.

Mr. Strzok: I'm not sure if I want to be part of this

Ms. Page: You are part of this and that's not going to change. But I think you have every right to be angry and frustrated about being left out of the loop on your investigation, especially when you're going to be left holding the bag. And I think you're entitled to say something to Baker about that, though on this one I would probably discuss with Bill first.

Ms. Page: I'm sorry [redacted]. Big big case, big big problems. But God knows you're still the right guy to do it.

Mr. Strzok: *Gmailed you two drafts of what I'm thinking of sending Bill, would appreciate your thoughts. Second (more recent) is updated so you can skip the first.*⁸

Peter Strzok (Apr. 20, 2016) (“Hey check your vm before you talk to your MYE team. Jim spoke to beth this am, nfi.”) [DOJ-PROD-105]; text message from Peter Strzok to Lisa Page (Sept. 26, 2016) (“Randy called him after he couldn't reach Toscas. So now Laufman is calling him all the time.”) [DOJ-PROD-14]; text message from Peter Strzok to Lisa Page (June 30, 2016) (“Also just emailed JR asking if D might want to call US Atty at some point.”) [DOJ-PROD-166].

⁷ “JB” likely refers to then-FBI General Counsel James Baker.

⁸ [DOJ-PROD-102]; *see also* text message from Lisa Page to Peter Strzok (Nov. 10, 2016) (“Hey without thinking I replied to the email you sent me on Gmail. . . .”) [DOJ-PROD-321]; text from Peter Strzok to Lisa Page (Sept. 15, 2015) (“Also, Bill did not tell Andy about the loss. Background reasons why, which make sense. I can fill you in

While it is unclear exactly what Mr. Strzok and Ms. Page were discussing in this exchange, Mr. Strzok appears to be expressing his frustrations with an investigation. On April 10, 2016, *Fox News* aired an interview with President Obama—taped earlier in the week in Chicago—in which President Obama noted that he “continued to believe that [Secretary Clinton] has not jeopardized America’s national security.”⁹ According to an early draft of Director Comey’s exoneration statement, Secretary Clinton emailed with President Obama while in the “territory of sophisticated adversary.”¹⁰ Notes from the FBI’s interview with Secretary Clinton confirm that she emailed President Obama from Russia.¹¹ Although it is unclear whether Mr. Strzok’s frustration was related to the President’s comments, the timing of the communication raises questions about the FBI’s handling of the Clinton email server investigation.

Questions also remain about the preservation of FBI records in this matter. In one series of text messages produced to the Committee, Mr. Strzok and Ms. Page hint at broader record-retention issues with the FBI’s Samsung mobile devices and that FBI employees sought to procure iPhones for their use. Specifically, Ms. Page and Mr. Strzok wrote in August 2016:

Ms. Page: Have a meeting with turgal¹² about getting iphone in a day or so

Mr. Strzok: Oh hot damn. I’m happy to pilot that . . . We get around our security/monitoring issues?

Ms. Page: No, he’s proposing that we just stop following them. Apparently the requirement to capture texts came from omb, but we’re the only org (I’m told) who is following that rule. His point is, if no one else is doing it why should we.

Ms. Page: Helps that Dd¹³ had a terrible time with his phone [redacted] which made him concerned for our folks all over the place.

Ms. Page: These phones suck as much as they do because of the program we use to capture texts, full stop.

on imessage later if you want.”). [DOJ-PROD-258]; text message from Lisa Page to Peter Strzok (June 7, 2016) (“Think I’m going to pull up eras in about 15, so we can always text there. . . .”) [DOJ-PROD-144]; Text message from Peter Strzok to Lisa Page (Dec. 13, 2016) (“Text from reporter: retrieving my password for skype. I forgot it. Text from reporter an hour and 31 minutes later: thanks man. Awesome as usual.”) [DOJ-PROD-338].

⁹ *Exclusive: President Barack Obama on ‘Fox News Sunday,’* Fox News, Apr. 10, 2016. The interview occurred at the University of Chicago Law School. *Id.* According to the President’s daily schedule, he was at the University of Chicago Law School on Thursday, April 7, 2016. See White House, What’s Happening, April 7, 2016 Schedule, <https://obamawhitehouse.archives.gov/blog?page=28#>.

¹⁰ See FBI Documents at SJ 000064.

¹¹ FBI Records: The Vault, *Hillary R. Clinton*, FD-302a(Rev. 10-6-95) Part 2 at 2, <https://vault.fbi.gov/hillary-r-clinton/Hillary%20R.%20Clinton%20Part%2002%20of%2017/view>.

¹² “[T]urgal” likely refers to Executive Assistant Director for the Information and Technology Branch James Turgal. See, e.g., Press Release, *FBI Announces Executive Appointments*, Feb. 11, 2016, <https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-executive-appointments-2>.

¹³ “Dd” likely refers to FBI Deputy Director Andrew McCabe.

Mr. Strzok: No doubt.

Mr. Strzok: I'm not convinced short of OPR, that text capture capability really deters anything.

Mr. Strzok: If I want to copy/take classified, I'm sure as hell not going to do it on this phone.

Ms. Page: I thought it was more from a discovery perspective.

Mr. Strzok: Probably. So just make a rule no texts of a discoverable nature. Like you said, what are CBP, DEA, others doing?

Ms. Page: I'm told – thought I have seen – that there is an IG report that says everyone is failing. But one has changed anything, so why not just join in the failure.¹⁴

The Justice Department Inspector General has requested “that the FBI produce text messages from the FBI-issued phones of certain FBI employees involved in the Clinton e-mail investigation”¹⁵ On January 29, 2017 FBI Deputy Director Andrew McCabe reportedly resigned following “a private meeting with FBI Director Christopher A. Wray during which Wray expressed concern about the findings of an investigation by the Justice Department’s Inspector General.”¹⁶

Accordingly, I respectfully request that the Department produce all text messages newly recovered sent or received by Peter Strzok and Lisa Page for the period December 14, 2016, to May 17, 2017. In addition, to ensure the Committee has a complete understanding of the FBI’s investigation, I respectfully request the following information and material:

1. Please produce all documents and communications, including but not limited to emails, memoranda, notes, text messages, iPhone instant messages, and voicemails, for the period January 1, 2015, to the present referring or relating to the FBI’s Midyear Exam investigation, the presence of classified information on Secretary of State Clinton’s private email server, or candidates for the 2016 presidential election for the following custodians:

¹⁴ Text messages between Lisa Page and Peter Strzok (Aug. 30, 2016) [DOJ-PROD-231-232].

¹⁵ Letter from Michael E. Horowitz, Inspector Gen., Dep’t of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov’t Affairs, and Sen. Charles Grassley, Chairman, S. Comm. on Judiciary, Jan. 25, 2018.

¹⁶ *Devlin Barrett and Matt Zapotosky*, FBI’s Andrew McCabe leaving deputy director job amid internal investigation. WASH POST, Jan. 29, 2018, https://www.washingtonpost.com/world/national-security/fbis-andrew-mccabe-leaving-deputy-director-job-will-retire-in-march/2018/01/29/35b1bbd4-051c-11e8-b48c-b07fea957bd5_story.html?hpid=hp_rhp-top-table-main_mccabe-112pm%3Ahomepage%2Fstory&utm_term=.cb2738fa2278.

- a. James Comey;
 - b. James Rybicki;
 - c. Andrew McCabe;
 - d. John Giacalone
 - e. James Turgal;
 - f. David Bowdich;
 - g. Jonathan Moffa;
 - h. Peter Strzok;
 - i. Lisa Page;
 - j. Trisha Anderson;
 - k. E.W. Priestap;
 - l. George Toscas;
 - m. Randy Coleman;
 - n. Brian Brooks;
 - o. Michael Kortan; and
 - p. James Baker.
2. Please explain whether any of the individuals identified in question 1 have been affected by the apparent Samsung device software glitch that lost the text messages¹⁷ of Mr. Strzok and Ms. Page.
 3. Please provide the calendars of the individuals named in question 1 from January 1, 2015 to the present.
 4. Please explain how and when the Department of Justice became aware that the FBI failed to retain communications of FBI employees between approximately December 14, 2016 and May 17, 2017.
 5. Has the FBI experienced similar failures to retain communications on other employee issued-devices?
 6. Did the FBI issue iPhones for any individual on the midyear exam team? Please explain.
 7. Please provide the email(s) Secretary Clinton sent President Obama while she was located in the “territory of a sophisticated adversary.”

Please provide this information as soon as possible but no later than February 14, 2018. Please provide an unclassified response to the greatest extent possible. If a full response requires the production of classified information, please provide this material under separate cover via the Office of Senate Security.

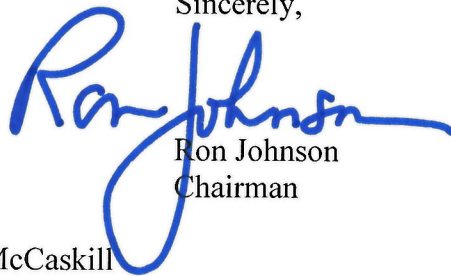
¹⁷ Letter from Stephen Boyd, Assistant Attorney Gen. for Legislative Affairs, Dep’t of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov’t Affairs, Jan. 19, 2018.

The Honorable Rod Rosenstein
January 31, 2018
Page 6

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government,”¹⁸ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices”¹⁹

Thank you for your attention to this matter. If you have any questions about this request, please contact Kyle Brosnan or Brian Downey of the Committee staff at (202) 224-4751.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Enclosure

¹⁸ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁹ S. Res. 62 § 12, 115th Cong. (2017).