

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

September 22, 2015

The Honorable Patrick F. Kennedy
Under Secretary
U.S. Department of State
Harry S. Truman Building
2201 C Street, NW
Washington, DC 20520

Dear Under Secretary Kennedy:

The Committee on Homeland Security and Governmental Affairs is examining former Secretary of State Hillary Clinton's use of a private email account and server during her time at the State Department.

On October 28, 2014, the State Department issued a formal request to Secretary Clinton and three other former secretaries asking that they provide records of communications during their tenures leading the State Department.¹ Secretary Clinton's attorney, David Kendall, informed the Committee that on December 5, 2014, he provided 30,490 emails from the Secretary's private email account in response to the State Department's request.² However, based on information obtained by the Committee, it appears that Secretary Clinton's representatives were already in the process of gathering and reviewing Secretary Clinton's emails as early as February 2014—months before the State Department made its official request for the records. Accordingly, I write to better understand the timing of the State Department's official request and its reasoning for issuing that request in October 2014.

It appears that as early as February 2014—approximately eight months prior to the State Department's formal document request—Secretary Clinton's staff asked Platte River Networks (PRN) to begin importing Secretary Clinton's archived emails "into [a] separate archive email box."³ Also in February 2014, PRN employees migrated Secretary Clinton's archived emails

¹ Letter from Patrick F. Kennedy, Under Secretary, U.S. Department of State, to Cheryl Mills (stamped Nov. 12, 2015) <http://www.archives.gov/press/press-releases/2015/pdf/attachment4-clinton-letter.pdf>; see also Letter from David E. Kendall, Williams & Connolly, LLP, to Senator Ron Johnson, S. Comm. On Homeland Sec. & Gov't Affairs (Aug. 12, 2015); Michelle Ye Hee Lee, *The misleading Democratic spin on Hillary Clinton's e-mails*, THE WASHINGTON POST (March 10, 2015) <http://www.washingtonpost.com/blogs/fact-checker/wp/2015/03/10/the-misleading-democratic-spin-on-hillary-clintons-emails/>.

² Letter from David E. Kendall, Williams & Connolly, LLP, to Senator Ron Johnson, S. Comm. On Homeland Sec. & Gov't Affairs (Aug. 12, 2015).

³ Invoice from Platte River Networks to Marcum LLP, Rorrie Gregorio, on behalf of Clinton Executive Services Corp. (Feb. 15, 2014). Platte River Networks was hired by the Clinton Family to set up a new email server in June 2013.

into the new email system.⁴ In July 2014, approximately three months prior to the State Department's formal document request, Secretary Clinton's staff asked PRN to make DVD copies of archived data related to Secretary Clinton's email account to be directly sent to Secretary Clinton's senior aide, Cheryl Mills, via overnight mail.⁵ In September 2014, apparently at the direction of Cheryl Mills, PRN encrypted Secretary Clinton's email archive.⁶

Based on this information, it appears that Secretary Clinton's staff was in the process of reviewing her emails months before the State Department's October 28, 2014, formal request for her records. However, based on Secretary Clinton's statements regarding her response to the State Department's October 2014 request, it would appear as though Secretary Clinton began reviewing emails only after the State Department asked for her records. On March 10, 2015 Secretary Clinton said:

“[A]fter I left office, the State Department asked former secretaries of state for our assistance in providing copies of work-related emails from our personal accounts. I responded right away and provided all my emails that could possibly be work-related, which totaled roughly 55,000 printed pages, even though I knew that the State Department already had the vast majority of them. We went through a thorough process to identify all of my work-related emails and deliver them to the State Department.”⁷

According to former Secretary Clinton's statements, it took her staff a little over one month to review over 60,000 thousand emails, determine if each email was official or personal, produce approximately 55,000 hard-copy pages to the State Department, and then permanently delete the remaining emails.⁸ However, from the information obtained by the Committee, it appears that Secretary Clinton's archiving and review of her emails were in fact aspects of a multi-month-long process that began as early as eight months prior to the State Department's formal request. Given this apparent discrepancy and the questions it raises about the rationale for and timing of the Department's request for official records, I ask the State Department to clarify the process that led to its formal records request on October 28, 2014, for Secretary Clinton's records.

In order to assist the Committee's oversight of this important matter, please provide the following information and materials:

1. Prior to the October 28, 2014 request, did the State Department communicate with Secretary Clinton or her representatives regarding the preservation and production of

⁴ Invoice from Platte River Networks to Marcum LLP, Rorrie Gregorio, on behalf of Clinton Executive Services Corp. (Feb. 28, 2014).

⁵ Email from Paul Combetta to Brenda Gies and Jill Milsom (July 23, 2014).

⁶ Invoice from Platte River Networks to Marcum LLP, Rorrie Gregorio, on behalf of Clinton Executive Services Corp. (September 30, 2014) (the encrypted file was a PST Outlook file that stores copies of messages, calendar events, and other items (*see* Microsoft Outlook, *Introduction to Outlook Data Files*, <https://support.office.com/en-us/article/Introduction-to-Outlook-Data-Files-pst-and-ost-6d4197ec-1304-4b81-a17d-66d4eef30b78>)).

⁷ Zeke J. Miller, *Transcript: Everything Hillary Clinton Said on the Email Controversy*, TIME (March 10, 2015) <http://time.com/3739541/transcript-hillary-clinton-email-press-conference/>.

⁸ *Id.* (quoting Secretary Clinton's press conference: "At the end, I chose not to keep my private personal emails").

email records contained on Secretary Clinton's private email account and server?
Please produce these communications.

2. Was the State Department aware of Secretary Clinton's review of the email records contained on her private email account and server prior to October 28, 2014? Please explain.
3. Please produce all documents and communications for the period January 1, 2014, to the present referring or relating to the State Department's request to four former Secretaries of State for federal records, including but not limited to all documents and communications referring or relating to the Department's decision-making process.
4. According to recent reports, there potentially exists a five month gap in Secretary Clinton's emails provided to the State Department.⁹ When did the State Department become aware of this gap in emails? What is the State Department doing to locate the missing emails? Please explain.

I request you provide this information and material as soon as possible, but no later than 5:00 p.m. on October 6, 2015.

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."¹⁰ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices. . . ."¹¹ For purposes of this request, please refer to the definitions and instructions in the enclosure.

⁹ Email from Eric Stein to Margaret Grafeld (Apr. 21, 2015) (Gaps in Secretary Clinton's emails include: messages received between January 21, 2009 to March 17, 2009, messages sent between January 21, 2009 and April 12, 2009, and messages sent between December 30, 2012 and February 1, 2013) found at <http://www.judicialwatch.org/wp-content/uploads/2015/09/pp-20-21-Stein-gap-09-13-15-Hillary-email-gap-JW-v-DOS-687.pdf>.

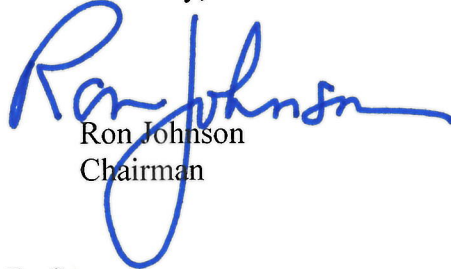
¹⁰ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹¹ S. Res. 73 § 12, 114th Cong. (2015).

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If you have any questions about this request, please contact Michael Lueptow or Scott Wittmann of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Ron Johnson". The signature is fluid and cursive, with the first name "Ron" and last name "Johnson" clearly legible.

Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Enclosure

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
114th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

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- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

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14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

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C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.

Instructions for Responding to a Committee Request

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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