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Congress of the United States

House of Representatives

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December 13, 2012

The Honorable Hillary Rodham Clinton
Secretary
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Dear Secretary Clinton:

In conjunction with the Committee's oversight into improprieties associated with the Department of Energy's 1705 Loan Guarantee Program, the issue of the use of personal e-mail accounts to conduct official business arose on numerous occasions.¹ Energy Department employees brazenly used personal e-mail accounts to communicate about internal loan guarantee decisions. In doing so, they circumvented laws and regulations governing recordkeeping requirements, concealed their discussions, and attempted to insulate their communications from scrutiny. For example, Jonathan Silver, a political appointee in charge of the \$38 billion program, used his personal account to e-mail another DOE official's personal account, issuing a stern warning: **"Don't ever send an email on doe email with a personal email addresses [sic]. That makes them subpoenaable."**²

The challenges associated with electronic records preservation are not limited to the use of personal e-mail. Recently, allegations arose that EPA Administrator Lisa Jackson has used at least one alias e-mail account – under the name "Richard Windsor" – to conduct official business.³ Such use of an alias raises the potential for inadequate tagging to the proper official and incomplete archiving of these communications.

¹ See, e.g., Letter from Rep. Darrell Issa, Chairman, & Rep. Jim Jordan, Chairman, Subcomm. on Reg. Affairs, Stimulus Oversight, & Gov't Spending, H. Comm. on Oversight & Gov't Reform (OGR), to Richard Kaufmann, Senior Advisor to the Sec'y, U.S. Dep't of Energy, *et al.* (Aug. 15, 2012) (requesting communications from non-official e-mail accounts regarding section 1705 loan guarantee program).

² E-mail from Jonathan Silver to Morgan Wright (Aug. 21, 2011).

³ Brendan Sasso, *House Republicans Question EPA over Secret Email Accounts*, THE HILL, Nov. 17, 2012, <http://thehill.com/blogs/e2-wire/e2-wire/268605-republicans-question-epa-over-secret-email-accounts>; Michael Bastasch, *EPA Chief's Secret 'Alias' E-mail Account Revealed*, DAILY CALLER, Nov. 12, 2012, <http://dailycaller.com/2012/11/12/epa-chiefs-secret-alias-email-account-revealed/>.

These examples suggest that the challenges this Administration has faced regarding the preservation of electronic communications used to conduct official business have persisted, rather than improved. Further, the growth of social media platforms – such as Facebook, Twitter, and G-chat – and mobile technologies – including laptops, handheld mobile devices, and iPads – pose new challenges for capturing and retaining records under existing federal law.

For some time, the Committee on Oversight and Government reform has been aware of deficiencies in compliance with both the Presidential Records Act and the Federal Records Act. During the 110th Congress, under the leadership of then-Chairman Henry A. Waxman, the Committee sent letters to the heads of 23 Executive Branch departments and agencies regarding e-mail communications using non-official accounts.⁴ Early in the Obama Administration, on February 18, 2009, I wrote to Gregory B. Craig, then-Counsel to the President, regarding this very subject.⁵ In April 2010, reports emerged that Office of Science and Technology Policy Deputy Chief Technology Officer Andrew McLaughlin had used his personal e-mail account to engage in official business. Specifically, he used his personal account to engage in discussion regarding policy matters under his review with his former employer, Google, Inc.⁶ In light of these and other reports documenting transparency failures, I alerted then-Committee Chairman Edolphus Towns of the need to investigate the matter further.⁷

On May 3, 2011, the full Committee held a hearing entitled, “Presidential Records in the New Millennium: Updating the Presidential Records Act and Other Federal Recordkeeping Statutes to Improve Electronic Records Preservation.” The hearing examined the enhanced transparency technology offers, particularly to improve citizens’ ability to interact with the federal government. It also highlighted the challenge of preventing federal officials from hiding their actions from public scrutiny in spite of these technological advancements. Finally, earlier this year, I wrote to White House Chief of Staff Jack Lew on August 3, 2012, requesting details of the use of personal e-mail accounts by White House staff to conduct official business.⁸

President Obama stressed improving the public’s ability to scrutinize government actions and decisions as part of his commitment to having the “most open and transparent [government] in history.”⁹ The growth of technology, however, continues to create new challenges for electronic records preservation, and this Administration has struggled to ensure that official actions are appropriately captured and documented.

⁴ See, e.g., Letter from Rep. Henry Waxman, Chairman, OGR, to Hon. Michael Astrue, Comm’r, U.S. Soc. Sec. Admin., *et al.* (Apr. 12, 2007).

⁵ Letter from Rep. Darrell Issa, Ranking Mem., OGR, to Hon. Gregory B. Craig, Counsel to the President (Feb. 18, 2009) (requesting detailed information about White House’s Presidential Records Act compliance efforts).

⁶ Kim Hart, *Former Googler To Resign from White House*, POLITICO, Dec. 22, 2010, <http://www.politico.com/news/stories/1210/46740.html>.

⁷ See, e.g., Letter from Rep. Darrell Issa, Ranking Mem., OGR, to Rep. Edolphus Towns, Chairman, OGR (June 30, 2010) (requesting investigation of use of personal e-mail accounts by Administration officials reported in media).

⁸ Letter from Rep. Darrell Issa, Chairman, OGR, to Hon. Jack Lew, Chief of Staff, The White House (Aug. 3, 2012).

⁹ The White House Blog, *Change has come to WhiteHouse.gov*,

http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov (Jan. 20, 2009).

To better assess the extent of this pervasive problem across the Executive Branch, I am writing to request information about your agency's policies and practices regarding the use of personal e-mail and other forms of electronic communication to conduct official business. Please provide the following information as soon as possible, but by no later than January 7, 2013:

1. Have you or any senior agency official ever used a personal e-mail account to conduct official business? If so, please identify the account used.
2. Have you or any senior agency official ever used an alias e-mail account to conduct official business? If so, please identify the account used.
3. Have you or any senior agency official ever used text messages, sent from an official or personal device, to conduct official business? If so, please identify the number or account used.
4. Please provide written documentation of the agency's policies regarding the use of non-official e-mail accounts to conduct official business, including, but not limited to, archiving and recordkeeping procedures, as well as disciplinary proceedings for employees in violation of these policies.
5. Does the agency require employees to certify on a periodic basis or at the end of their employment with the agency they have turned over any communications involving official business that they have sent or received using non-official accounts?
6. What is the agency's policy for retention of information posted on social networking platforms, including, but not limited to, Twitter or Facebook?
7. What agency policies and procedures are currently in place to ensure that all messages related to official business sent or received by federal employees and contractors on private, non-governmental e-mail accounts or social networking platforms are properly categorized as federal records?
8. Have any agency employees been subject to disciplinary proceedings for using non-official e-mail accounts to conduct official business since January 20, 2009? If so, please provide a list of names, dates of proceedings, and final outcomes.

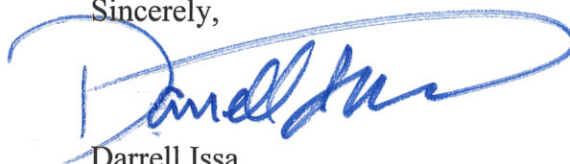
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Please deliver your responses to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

The Honorable Hillary Rodham Clinton
December 13, 2012
Page 4

If you have any questions about this request, please call Ashley Callen or John Ohly of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish above the name.

Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member



MAR 27 2013
United States Department of State

Washington, D.C. 20520

MAR 27 2013

Dear Mr. Chairman:

Thank you for your December 13 letter regarding the Department's policies and practices relating to records management and the use of personal e-mail addresses and other forms of electronic communication to conduct official government business.

The Department's records management policies are detailed in Chapter 5, Section 400 of the Foreign Affairs Manual (FAM) and Chapter 5, Part 4 of the Foreign Affairs Handbook (FAH). These provisions set out guidelines and procedures pertaining to the creation, use, maintenance and ultimate disposition of records, including electronic records, consistent with the requirements of the Federal Records Act (44 U.S.C. § 3101) and other applicable law. Specifically, 5 FAM 422.3 reiterates that "every Department of State employee must create and preserve records that properly and adequately document the organization, functions, policies, decisions, procedures, and essential transactions of the Department." According to 5 FAM 723(3), employees may use personal e-mail on personal time for matters not directly related to official business, and any employee using personal e-mail "should make it clear that his or her personal e-mail is not being used for official business." Chapter 5 of the FAM also outlines Department policies for the use social media by Department personnel while acting in their official capacities.

The Department offers training opportunities on its records management program at the Foreign Service Institute, and offers specialized training for individual offices and overseas posts. The Bureau of Administration's Records and

The Honorable
Darrell Issa, Chairman,
Committee on Oversight and Government Reform,
House of Representatives.

Archives Management Division supports offices and overseas posts in establishing appropriate filing systems and also conducts periodic reviews as a means of improving operations, protecting information resources and ensuring compliance with the Federal Records Act and other applicable law.

For your convenience, we have attached certain relevant provisions of the FAM and the FAH. These and other documents are publicly available on the Department's website at <http://www.state.gov/m/a/dir/regs/index.htm>. We hope you find this information useful. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Gibbons". The signature is fluid and cursive, with a prominent flourish at the end.

Thomas B. Gibbons
Acting Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

5 FAH-4 H-100 RECORDS MANAGEMENT

5 FAH-4 H-110 GENERAL

(CT:RMH-13; 06-19-2012) (Office of Origin: A/GIS/IPS) (Updated only to revise Office of Origin)

5 FAH-4 H-111 PURPOSE

(TL:RMH-1; 10-30-1995)

This handbook prescribes the basic procedures and practices for the efficient and secure management of records of the Department of State and Foreign Service posts. It is intended for the use of officers, supervisors, or other personnel who are directly or indirectly responsible for records operations or management, regardless of the physical location of the records.

5 FAH-4 H-112 SCOPE

(TL:RMH-1; 10-30-1995)

The guidelines and procedures contained in this handbook pertain to the creation, use, maintenance, and ultimate disposition of records. Unless specifically stated, these records management procedures pertain to both Department offices and posts overseas.

5 FAH-4 H-113 DEFINITIONS

(TL:RMH-1; 10-30-1995)

Administrative Records. Records relating to budget, personnel, supply, and similar housekeeping, or facilitative functions common to most offices, in contrast to program records.

Archival Records. Records with long term or permanent value worthy of preservation by the National Archives.

Automated Document System (ADS). ADS is an automated central database that contains texts of telegrams and written documents about Department policies dating back to 1973. The two basic retrieval files are:

- (1) Citation file—contains summary data on a document. Included are originator, addressee, TAGS, subject line, and ADS-generated number identifying the reel and frame location of the microfilmed text stored by OIS.
- (2) Text Record file—contains texts of telegrams. ADS stores citations to the microfilmed texts of the following types of documents:

State Dept. Records Show John Kerry Sent Hillary A 'SECRET' Email From His iPad

The Daily Caller on Jan. 30, 2016

<http://dailycaller.com/2016/01/30/state-dept-records-show-john-kerry-sent-hillary-a-secret-email-from-his-ipad/#ixzz41fFbc6gz>

Emails released by the State Department on Friday show that in 2011, then-Massachusetts Sen. John Kerry sent then-Sec. of State Hillary Clinton an email from his iPad that has been deemed to contain information classified as "Secret."

While previous releases of Clinton's emails have shown that she and her staff communicated directly with Kerry when he was a senator, the new email is the first from Kerry that the State Department has determined contains sensitive information.

Kerry has largely been silent throughout the Clinton email controversy. He has sent letters asking the State Department's inspector general to review the agency's records keeping practices, but he has not publicly criticized Clinton for exclusively using a personal email account and a home-brew email server.

Perhaps now we know why.

In the heavily-redacted email, dated May 19, 2011, Kerry, who then chaired the Senate Foreign Relations Committee, appears to be discussing negotiations between India and Pakistan. Besides Clinton, the email was sent to Tom Donilon, who then served as President Obama's National Security Advisor.

Clinton forwarded the email to an aide, instructing her to "Pls print" the document.

The redactions in the email are listed under the Freedom of Information Act exemptions 1.4(b) and 1.4(d), which are categories reserved for information gleaned from foreign government sources.

The kicker is that Kerry sent Clinton the information from his iPad, a communications device that would have been much more vulnerable to hackers than an encrypted communications system.

According to the Republican National Committee, which flagged the Kerry email in an email to reporters, the batch of Clinton records released on Friday contained 11 emails that the State Department now says contain "Secret" information. That's more than double the number of emails that contained similarly classified information released in all of the previous releases combined.

According to the RNC's calculations, 243 emails released Friday were classified at some level, bringing the overall number of classified Clinton emails to 1,583. The State Department also announced Friday that it is withholding in full and into perpetuity 22 emails that contain "Top

Secret” information — the highest classification category. **(RELATED: State Dept. Withholding 18 Emails Between Hillary, Obama [VIDEO])**

The State Department says it is uncertain whether the information in those emails was classified at the time they were originated. The Intelligence Community’s inspector general has said that two separate Clinton emails were contained information that was “Top Secret” when sent. That distinction is crucial because Clinton has maintained that none of the classified emails found on her server were classified when created.

As Clinton’s successor at the State Department, Kerry has overseen the release of the work-related emails that the Democratic presidential candidate handed over in Dec. 2014. But the Democrat and his agency have been criticized by many for appearing to side with Clinton in a battle with the intelligence community over the classification status of many of her emails. During a press conference in Canada on Friday, Kerry declined to comment on the news that the State Department was acknowledging that 22 of Clinton’s emails contain “Top Secret” information.

“I can’t speak to the specifics of anything with respect to the technicalities, the contents ... because that’s not our job,” he said, according to Reuters. “We don’t know about it, it’s in other hands.”

He was not asked about his sensitive communications with Clinton.

Another question Kerry hasn’t answered is why, since he knew that Clinton used a personal email account while at the State Department, he failed to demand that she turn her emails over to the State Department until autumn 2014 after agency lawyers uncovered Clinton’s email address while reviewing documents related to the House Select Committee on Benghazi’s investigation. It is unclear if Kerry knew about Clinton’s use of a private server, though other high-ranking State Department officials likely did. Emails obtained by The Daily Caller earlier this month show that Patrick Kennedy, the under secretary of management, was on an email chain in which Clinton’s server was being discussed. **(RELATED: Emails Show Clinton Aides Resisted State Dept. Suggestion That She Use A State.gov Account)**

Kerry sent 'secret' email to Clinton from personal account

The Hill on 02/02/2016

<http://thehill.com/policy/national-security/267949-kerry-sent-secret-email-to-clinton-from-personal-account>

As a senator, Secretary of State [John Kerry](#) sent at least one email to Hillary Clinton from his personal account that has now been classified as secret, the State Department confirmed on Tuesday.

The largely redacted [May 19, 2011, email](#) from Kerry — then the chairman of the Foreign Relations Committee — “was sent from a non-official account,” State Department spokesman [John Kirby](#) said on Tuesday.

That account, Kirby added “is no longer active.”

The message referenced India, Afghanistan and Pakistan, and was classified for containing information about foreign governments and U.S. foreign relations.

“We all know this will be a troubled relationship because that is it’s [sic] nature,” he wrote in one unredacted section. “But there are real possibilities at this moment to put options to the test.”

Kerry’s email was classified at the “secret” level, which is a higher level than “confidential” but lower than “top secret”

A note at the bottom of the message indicates that it was sent from Kerry’s iPad.

Key Obama administration officials have struggled with stories about their use of personal email accounts for official business, but none more than Clinton, the former secretary of State and current Democratic presidential front-runner.

Clinton’s use of a personal email address throughout her tenure at the State Department has made her a target of criticism from many Republicans and transparency advocates. Critics of the practice worry that using an unsecure account to send secret information could jeopardize classified information.

More than 1,300 of Clinton's emails have been classified at some level. However, the State Department has maintained that the emails were not classified at the time that they were sent, but instead were given the extra protections retroactively.

Kerry currently uses a State Department-issued email address, Kirby said.

On Tuesday, the head of the Senate Judiciary Committee [expanded his probe](#) into the how Obama administration officials used personal email accounts, demanding answers from Defense Secretary Ashton Carter. Carter used a personal email account for months after he took the reins at the Pentagon last year.