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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 2, 2014

The Honorable John F. Kerry  
Secretary  
U.S. Department of State  
2201 C Street, NW  
Washington, D.C. 20520

Dear Mr. Secretary:

Just weeks before taking over for outgoing Secretary of State Hillary Clinton, while serving as Chairman of the Senate Foreign relations Committee, you expressed a commitment to obtaining the full record of facts related to the deadly September 11-12, 2012, attack on U.S. diplomatic facilities in Benghazi, Libya. You said, "From the very beginning of the Benghazi events, every member of this Committee has shared with the President and Secretary Clinton our determination to get all the facts about what happened and why in Benghazi."<sup>1</sup>

You aligned yourself with a similar, previous commitment from the President. On November 14, 2012, President Obama stated:

I think it is important for us to find out exactly what happened in Benghazi, and **I'm happy to cooperate in any ways that Congress wants.** We have provided every bit of information that we have, and we will continue to provide information. And we've got a full-blown investigation, and **all that information will be disgorged to Congress.**<sup>2</sup>

By the time you took over for Secretary Clinton, the State Department had a well-deserved reputation for obstructing and delaying the congressional investigation of the Benghazi attack. This was brought to your attention, and you pledged to fix it. On April 17, 2013, in a hearing before the House Committee on Foreign Affairs, you were questioned about the State Department's unwillingness to cooperate with the congressional investigation. In response to a

<sup>1</sup> *Benghazi: Lessons Learned: Hearing Before the S. Comm. on Foreign Relations, 112<sup>th</sup> Cong.* (Dec. 20, 2012) (statement of Hon. John F. Kerry, Chairman).

<sup>2</sup> Remarks by the President in a News Conference (Nov. 14, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/11/14/remarks-president-news-conference> (last visited May 1, 2014). (emphasis added)

question from Chairman Ed Royce, you stated, “There’s certainly no position by me to delay anything, and I was not aware.”<sup>3</sup>

On April 26, 2013, I wrote you to make you aware that the Department had in fact impeded the congressional investigation of the Benghazi attack.<sup>4</sup> Because of the Department’s unwillingness to cooperate voluntarily, I was forced to issue a series of subpoenas to create a legal obligation to comply with the congressional investigation.<sup>5</sup> Among other things, the subpoenas required you to produce documents to the Committee that have not been “modified . . . or otherwise made inaccessible.”<sup>6</sup> You were also required to provide a log of any documents being withheld from the Committee, and to identify the privilege being asserted to withhold the documents.<sup>7</sup>

It is now more than 19 months since the attack, and more than one year since you were made aware of the State Department’s failure to live up to your and the President’s commitments. Little has changed. The State Department continues to produce heavily redacted documents to the Committee. Even classified documents, which are already protected from public disclosure, are blacked out. Some categories of documents have been withheld entirely, and no valid privilege has been asserted. For example, a subpoena issued on August 1, 2013, required you to produce, among other things, all notes or summaries of witness interviews conducted by the Accountability Review Board.<sup>8</sup> The Department cited institutional interests and withheld these documents in their entirety. They were not even made available to the Committee *in camera*. To date, the Department has not cited a valid privilege as the basis for withholding these documents, and many others.

New documents the State Department released to the Committee only after compulsion in a Freedom of Information Act lawsuit appears to offer conclusive evidence that your agency attempted to illegally withhold subpoenaed material. I remind you that such contempt of Congress may constitute a criminal offense. Documents produced to the Committee last week—which were covered by congressional document requests as far back as September 2012, and additionally by subpoena—show then-White House Deputy Strategic Communications Adviser Ben Rhodes and other Obama administration public relations officials “attempted to orchestrate a campaign to ‘reinforce’ President Obama and to portray the Benghazi consulate terrorist attack as being ‘rooted in an Internet video, and not a failure of policy.’”<sup>9</sup>

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<sup>3</sup> *Securing U.S. Interests Abroad: The FY 2014 Foreign Affairs Budget: Hearing Before the H. Comm. on Foreign Affairs*, 113<sup>th</sup> Cong. (Apr. 17, 2013) (statement of Hon. John F. Kerry, Secretary, U.S. Dep’t. of State).

<sup>4</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. John F. Kerry, Sec’y, U.S. Dep’t of State, Apr. 26, 2013.

<sup>5</sup> Subpoenas from H. Comm. on Oversight & Gov’t Reform to Hon. John F. Kerry, Sec’y, U.S. Dep’t of State (May 28, 2013, Aug. 1, 2013, and Aug. 1, 2013).

<sup>6</sup> *Id.*, Schedule Instruction 1.

<sup>7</sup> *Id.*, Schedule Instruction 12.

<sup>8</sup> Subpoena from H. Comm. on Oversight & Gov’t Reform to Hon. John F. Kerry, Sec’y, U.S. Dep’t of State (Aug. 1, 2013), paragraph 2.

<sup>9</sup> Judicial Watch Press Release, “Benghazi Documents Point to White House on Misleading Talking Points,” Apr. 29, 2014, *available at* <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-benghazi-documents-point-white-house-misleading-talking-points/> (last visited May 1, 2014).

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May 2, 2014  
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The fact that these documents were withheld from Congress for more than 19 months is alarming. The Department is not entitled to delay responsive materials because it is embarrassing or implicates the roles and actions of senior officials.

The State Department's response to the congressional investigation of the Benghazi attack has shown a disturbing disregard for the Department's legal obligations to Congress. This disregard for the rule of law is even more disturbing considering your agency's role in encouraging governments throughout the world to respect the rule of law and the authority of representative government brought to office through free and fair elections. By ignoring your own legal obligations and posturing the State Department as immune from congressional oversight, these actions undermine our credibility abroad and erode our moral authority.

Compliance with a subpoena for documents is not a game. Because your Department is failing to meet its legal obligations, I am issuing a new subpoena to compel you to appear before the Committee to answer questions about your agency's response to the congressional investigation of the Benghazi attack. That subpoena is attached. I expect you to identify documents the Department is withholding, has delayed, or has simply avoided searching for and explain these actions.

Please contact the Committee at (202) 225-5074 with any questions about this letter, or about the subpoena enclosed herein.

Sincerely,



Darrell Issa  
Chairman

Attachment

cc: The Honorable Elijah E. Cummings, Ranking Member