

# Congress of the United States

Washington, DC 20515

August 15, 2016

The Honorable Channing D. Phillips  
U.S. Attorney for the District of Columbia  
555 Fourth Street NW  
Washington, D.C. 20530

Dear Mr. Phillips:

On August 2, 2016, Assistant Attorney General Peter Kadzik confirmed that you received the Committees' request for an investigation regarding certain statements made by former Secretary of State Hillary Clinton during her testimony before Congress and will "take appropriate action as necessary."<sup>1</sup> To assist the investigation, this letter identifies several pieces of Secretary Clinton's testimony that appear to implicate 18 U.S.C. §§1621 and 1001, the criminal statutes that prohibit perjury and false statements, respectively. The evidence collected by the Federal Bureau of Investigation (FBI) during its investigation of Secretary Clinton's use of a personal email system during her time as Secretary of State appears to directly contradict several aspects of her sworn testimony, which are described in greater detail below.

During a House Select Committee on Benghazi hearing on October 22, 2015, Secretary Clinton testified with respect to (1) whether she sent or received emails that were marked classified at the time; (2) whether her attorneys reviewed each of the emails on her personal email system; (3) whether there was one, or more servers that stored work-related emails during her time as Secretary of State; and (4) whether she provided all her work-related emails to the Department of State.

Although there may be other aspects of Secretary Clinton's sworn testimony that are at odds with the FBI's findings, her testimony in those four areas bears specific scrutiny in light of the facts and evidence FBI Director James Comey described in his public statement on July 5, 2016, and in testimony before the Committee on Oversight and Government Reform on July 7, 2016.

***(1) Contrary to her sworn testimony, Secretary Clinton sent and received emails that were marked classified at the time.***

With respect to whether she sent or received emails that were marked classified at the time, Secretary Clinton testified under oath to the Select Committee that she did not. Specifically, during questioning by Rep. Jim Jordan, Secretary Clinton stated "there was

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<sup>1</sup> Letter from Peter Kadzik, Asst. Att'y Gen., U.S. Dept. of Justice, to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, and Bob Goodlatte, Chairman, H. Comm. on the Judiciary (Aug. 2, 2016).

nothing marked classified on my emails, either sent or received.”<sup>2</sup> Secretary Clinton further testified:

[M]any Americans have no idea how the classification process works. And therefore I wanted to make it clear that there is a system within our government, certainly within the State Department . . . where material that is thought to be classified is marked such, so that people have the opportunity to know how they are supposed to be handling those materials . . . and that’s why it became clearer, I believe, to say that *nothing was marked classified at the time I sent or received it.*<sup>3</sup>

The FBI, however, found several of Secretary Clinton’s emails did in fact contain markings that identified classified information therein. In Director Comey’s public statement on July 5, 2016, he said, “a very small number of the emails containing classified information bore the markings indicating the presence of classified information.”<sup>4</sup>

When Director Comey testified on July 7, 2016, he specifically addressed this issue. Rep. Trey Gowdy asked, “Secretary Clinton said there was nothing marked classified either sent or received. Was it true?”<sup>5</sup> He said it was not.<sup>6</sup>

Director Comey also stated, “There was classified material emailed.”<sup>7</sup> Specifically, he stated that three documents on Secretary Clinton’s private server contained classified information clearly marked “Confidential.”<sup>8</sup> He further testified, “In the one involving ‘top secret’ information, Secretary Clinton not only received but also sent emails that talked about the same subject.”<sup>9</sup>

***(2) Contrary to her sworn testimony, Secretary Clinton’s lawyers did not read each email in her personal account to identify all the work-related messages.***

With respect to whether her attorneys reviewed each of the emails on her personal email system, Secretary Clinton testified that her attorneys used search terms and reviewed

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<sup>2</sup> Full text: *Clinton testifies before House committee on Benghazi*, Wash. Post, Oct. 22, 2015, available at <https://www.washingtonpost.com/news/post-politics/wp/2015/10/22/transcript-clinton-testifies-before-house-committee-on-benghazi/>. [hereinafter Testimony of Sec’y Clinton to the H. Select Comm. on Benghazi]

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> FBI Press Release, “Statement of FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-mail System,” July 5, 2016, available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b.-comey-on-the-investigation-of-secretary-hillary-clintons-use-of-a-personal-e-mail-system>. [hereinafter Comey Statement]

<sup>5</sup> *Oversight of the State Department: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. (July 7, 2016) (statement of James Comey, Director, FBI).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

every single email to identify any that were work-related and should therefore be returned to the Department of State.<sup>10</sup> She stated:

Rep. Jordan: But I'm asking how -- I'm asking how it was done. Was -- did someone physically look at the 62,000 e-mails, or did you use search terms, date parameters? I want to know the specifics.

Mrs. Clinton: They did all of that, and I did not look over their shoulders, because I thought it would be appropriate for them to conduct that search, and they did.

Rep. Jordan: Will you provide this committee -- or can you answer today, what were the search terms?

Mrs. Clinton: *The search terms were everything you could imagine that might be related to anything, but they also went through every single e-mail.*<sup>11</sup>

The FBI found, however, that Secretary Clinton's lawyers did not in fact read all of her emails—they relied exclusively on a set of search terms to identify work-related messages. On July 5, 2016, Director Comey testified:

The lawyers doing the sorting for Secretary Clinton in 2014 did not individually read the content of all of her e-mails, as we did for those available to us; instead, they relied on header information and used search terms to try to find all work-related e-mails among the reportedly more than 60,000 total e-mails remaining on Secretary Clinton's personal system in 2014. It is highly likely their search terms missed some work-related e-mails, and that we later found them, for example, in the mailboxes of other officials or in the slack space of a server. It is also likely that there are other work-related e-mails that they did not produce to State and that we did not find elsewhere, and that are now gone because they deleted all e-mails they did not return to State, and the lawyers cleaned their devices in such a way as to preclude complete forensic recovery.<sup>12</sup>

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<sup>10</sup> Testimony of Sec'y Clinton to the H. Select Comm. on Benghazi.

<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> Comey Statement.

***(3) Contrary to her sworn testimony, Secretary Clinton used several different servers and numerous devices to send and receive work-related emails.***

With respect to whether there was one, or more servers that stored work-related emails during her time as Secretary of State, Secretary Clinton testified there was only one server.<sup>13</sup> She stated:

Rep. Jordan: In March, you also said this: your server was physically located on your property, which is protected by the Secret Service. I'm having a hard time figuring this out, because this story's been all over the place. But -- there was one server on your property in New York, and a second server hosted by a Colorado company in -- housed in New Jersey. Is that right? There were two servers?

Mrs. Clinton: No.

Rep. Jordan: OK.

Mrs. Clinton: There was a -- there was a server...

Rep. Jordan: Just one?

Mrs. Clinton: . . . that was already being used by my husband's team. An existing system in our home that I used, and then later, again, my husband's office decided that they wanted to change their arrangements, and that's when they contracted with the company in Colorado.

Rep. Jordan: And so there's only one server? Is that what you're telling me? And it's the one server that the FBI has?

Mrs. Clinton: The FBI has the server that was used during the tenure of my State Department service.<sup>14</sup>

The FBI, however, found Secretary Clinton stored work-related emails on several servers. In Director Comey's public statement, he said, "Secretary Clinton used several different servers and administrators of those servers during her four years at the State Department, and used numerous mobile devices to view and send e-mail on that personal domain."<sup>15</sup>

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<sup>13</sup> Testimony of Sec'y Clinton to the H. Select Comm. on Benghazi.

<sup>14</sup> *Id.*

<sup>15</sup> Comey Statement.

In Director Comey's testimony on July 7, 2016, he stated that Secretary Clinton used several devices to send and receive work-related emails during her tenure as Secretary of State. He testified, "She used multiple devices during her four years as secretary of state."<sup>16</sup>

***(4) Contrary to her sworn testimony, Secretary Clinton did not provide all of her work-related email to the Department of Justice.***

Finally, with respect to whether she provided all her work-related emails to the Department of State, Secretary Clinton testified to the Select Committee that she had.<sup>17</sup> She stated:

Mrs. Clinton: Well, Congressman, I have said repeatedly that I take responsibility for my use of personal e-mail. I've said it was a mistake. I've said that it was allowed, but it was not a good choice. When I got to the department, we were faced with a global financial crisis, major troop decisions on Afghanistan, the imperative to rebuild our alliances in Europe and Asia, an ongoing war in Iraq, and so much else. E-mail was not my primary means of communication, as I have said earlier. I did not have a computer on my desk. I've described how I did work: in meetings, secure and unsecured phone calls, reviewing many, many pages of materials every day, attending . . .

Rep. Jordan: I -- I -- I appreciate (inaudible).

Mrs. Clinton: . . . a great deal of meetings, and *I provided the department, which has been providing you, with all of my work-related e-mails, all that I had.* Approximately 55,000 pages. And they are being publicly released.<sup>18</sup>

The FBI found, however, "several thousand work-related e-mails that were not in the group of 30,000 that were returned by Secretary Clinton to State in 2014."<sup>19</sup> In the course of its investigation, the FBI recovered "still others . . . from the laborious review of the millions of e-mail fragments dumped into the slack space of the server decommissioned in 2013."<sup>20</sup>

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<sup>16</sup> *Oversight of the State Department: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (July 7, 2016) (statement of James Comey, Director, FBI).

<sup>17</sup> Testimony of Sec'y Clinton to the H. Select Comm. on Benghazi.

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> Comey Statement.

<sup>20</sup> *Id.*

The Honorable Channing D. Phillips

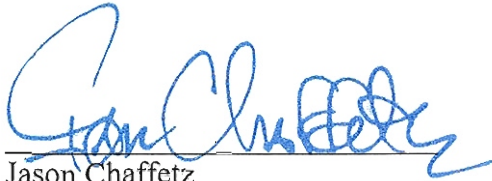
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When Director Comey appeared before the Committee on Oversight and Government Reform on July 7, 2016, he confirmed that Secretary Clinton did not turn over all work-related emails to the FBI. He stated, "We found work-related emails, thousands, that were not returned."<sup>21</sup>

The four pieces of sworn testimony by Secretary Clinton described herein are incompatible with the FBI's findings. We hope this information is helpful to your office's consideration of our referral. Thank you for your attention to this important matter. Please contact us with any questions.

Sincerely,



Jason Chaffetz

Chairman

Committee on Oversight and  
Government Reform



Bob Goodlatte

Chairman

Committee on the Judiciary

cc: The Honorable Elijah E. Cummings, Ranking Member  
Committee on Oversight and Government Reform

The Honorable John Conyers, Jr., Ranking Member  
Committee on the Judiciary

The Honorable Loretta E. Lynch  
Attorney General of the United States

The Honorable James B. Comey  
Director of the Federal Bureau of Investigation

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<sup>21</sup> *Oversight of the State Department: Hearing Before the H. Comm. on Oversight & Gov't Reform, 114th Cong. (July 7, 2016) (statement of James Comey, Director, FBI).*