



## FLASH MEMORANDUM

October 17, 2016

**To:** Republican Members  
Committee on Oversight and Government Reform and Permanent Select  
Committee on Intelligence

**From:** Chairman Jason Chaffetz, Committee on Oversight and Government Reform  
Chairman Devin Nunes, Permanent Select Committee on Intelligence

**Re:** Preliminary Update—Newly Released Interview Summaries from FBI Investigation  
of Secretary Clinton’s Server

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Newly produced FBI documents make clear the extraordinary special treatment the State Department gave to Secretary Clinton’s emails. It’s difficult to understand why the FBI didn’t produce these documents as part of the original case file production. The FBI claimed they were not significant and only handed them over upon insistence from Congress.

The State Department put immense pressure on its own employees and on the FBI to determine none of the information in Secretary Clinton’s emails was classified (Part 04 of 04 [FBI Records Management Division employee], at 25-27; Part 04 of 04 [FBI International Operations Division employee], at 28; Part 04 of 04 [Office of Information Programs and Services employee #2], at 55-56; see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 42-43).

- In the spring of 2015, Under Secretary Patrick Kennedy contacted a senior FBI official to request the FBI reverse its finding that one of Secretary Clinton’s Benghazi-related emails contained classified information (Part 04 of 04 [FBI International Operations Division employee], at 28; Part 04 of 04 [FBI Records Management Division employee], at 25-27). Kennedy allegedly assured the FBI official State would “archive the document in the basement of [the Department] never to be seen again,” withholding it from the public under Freedom of Information Act (FOIA) exception (b)(9), which relates to geological and geophysical information (Part 04 of 04 [FBI International Operations Division employee], at 28).

- In response, the FBI official proposed a “quid pro quo” to downgrade the classification if the State Department would support increasing FBI personnel into Iraq (Part 04 of 04 [FBI Records Management Division employee], at 25-27); Part 04 of 04 [FBI International Operations Division employee], at 28-29). A veteran diplomat like Kennedy should have been receptive to the FBI’s personnel needs without resorting to a bargain that could threaten national security information. Due to the sensitive nature of the information, the classification was never ultimately downgraded (Part 04 of 04 [FBI Records Management Division employee], at 25-27).
- Thereafter, the State Department stopped conferring with the FBI on classification decisions related to Secretary Clinton’s emails, and instead consulted with the Department of Justice to represent FBI equities (Part 04 of 04 [Office of Information Programs and Services employee #2], at 55; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52).

Career State Department personnel who typically handle FOIA requests told the FBI the process for reviewing and releasing Secretary Clinton’s emails was highly unusual, coordinated through the Office of Legislative Affairs rather than the normal FOIA office, and that decisions were made far differently for these emails than for any other FOIA request (Part 04 of 04 [Office of Information Programs and Services employee #2], at 54-56; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52; Part 04 of 04 [State Department Office of Inspector General], at 91-92; see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 42-43).

- These career public servants, which normally process FOIA requests, considered it odd that a separate system was set up to review the Clinton emails, including bringing on Austin Evers and former IRS employee Kate Duval, both of whom had formerly worked at Williams & Connolly – the very same law firm representing Secretary Clinton (Part 04 of 04 [Office of Information Programs and Services employee #2], at 54-56; Part 04 of 04 [Office of Information Programs and Services employee #3], at 51-52; Part 04 of 04 [Office of the Inspector General of the Intelligence Community employee], at 88-89).
- The two Legislative Affairs attorneys met regularly with a group of senior State Department officials which the career personnel dubbed “the shadow government” (Part 04 of 04 [Office of Information Programs and Services employee #2], at 56). The group included Secretary Kerry’s Chief of Staff, Under Secretary for Management Patrick Kennedy, and others, who met to decide how to respond to Congressional and FOIA requests related to Secretary Clinton (Part 04 of 04 [Office of Information Programs and Services employee #2], at 56).
- Secretary Clinton has said her federal records were preserved throughout her tenure through the Department employees who received emails from her. Accordingly, the State Department sent a Department-wide request to produce to the FOIA office any emails with Secretary Clinton. Yet when Secretary Clinton’s lawyers produced a limited batch of emails, some of them involved employees who claimed they had no emails with Secretary Clinton (Part 04 of 04 [State Department Office of Inspector General], at 91-

92). The FOIA office considered itself unable to compel the employees, and State failed to take any further action to discover if the employees had additional emails that had not yet been produced (Part 04 of 04 [State Department Office of Inspector General], at 91-92).

The documents included new details about how Secretary Clinton and her attorneys handled information and classified facilities.

- Clinton regularly violated Sensitive Compartmented Information Facility (SCIF) rules by carrying her BlackBerry into the secure area, and also by requiring her Diplomatic Security protective detail agents to hold the BlackBerry in the SCIF, thus requiring them to violate security rules (Part 04 of 04 [State Department Bureau of Diplomatic Security], at 45).
- Even after the FBI took possession of jump drives and one laptop of Secretary Clinton's emails from her attorneys on August 6, 2015, the attorneys retained six additional laptops until August 17 (Part 04 of 04 [Katherine Turner], at 59-60; Part 04 of 04 [Katherine Turner], at 39). One of the laptops was repeatedly used to access the internet even after Secretary Clinton's emails were on the computer – including the classified ones (Part 04 of 04 [Katherine Turner], at 39).
- Secretary Clinton's attorneys acknowledged that some attorneys who viewed the emails did not have security clearances (Part 04 of 04 [Katherine Turner], at 39).
- Williams and Connolly originally suggested that they had 14 boxes of Clinton emails, but only 12 were picked up, and no one knows what happened to the other two (Part 04 of 04 [Office of Information Programs and Services employee #2], at 53-54; [Office of the Inspector General of the Intelligence Community employee], at 88-89); see also Part 03 of 04 [Office of Information Programs and Services employee #1], at 40).