

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

October 20, 2016

The Honorable James B. Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue NW  
Washington, D.C. 20530

Dear Director Comey:

In light of the documents produced by the FBI on October 14, 2016, the Committee is investigating allegations that a “*quid pro quo*” was proposed between the Bureau and the Department of State in exchange for downgrading the classification of one of Secretary Clinton’s emails, and the adequacy of the FBI’s internal review of those allegations.

Documents show the FBI’s investigation uncovered multiple instances in which State Department Under Secretary for Management Patrick Kennedy sought to pressure the FBI to change its classification designation of a November 18, 2012, email regarding FBI operations in Libya. For instance, witnesses described Kennedy making the request in person during meetings with FBI officials<sup>1</sup> and during a phone call with Michael Steinbach, Assistant Director of the FBI’s Counterterrorism Division.<sup>2</sup> When Kennedy was unable to persuade Steinbach, he reportedly asked whether the FBI would be making a public statement on the matter.<sup>3</sup> One hour later, a comment from State Department spokesperson Marie Harf appeared in an Associated Press story breaking the news for the first time that some of the information on Secretary Clinton’s private server had been classified.<sup>4</sup>

It is unclear whether Kennedy communicated with anyone more senior at the FBI to seek downgrading the level of classification of the November 18, 2012, email—or any of the thousands of other classified emails sent or received on Secretary Clinton’s private server. According to the FBI’s interview summaries, however, the FBI Records Management Division official who witnessed some of these interactions believed “STATE has an agenda which

<sup>1</sup> FBI FD-302a interview summary, [State Dep’t Office of Information Programs and Services official] (Aug. 17, 2015), at 4.

<sup>2</sup> FBI FD-302a interview summary, [FBI Records Management Division official] (Jul. 30, 2015), at 2-3.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*; see also Lisa Lerer, Matthew Lee, and Jack Gillum, *Clinton received sensitive info on private email account*, ASSOCIATED PRESS, May 22, 2015.

involves minimizing the classified nature of the CLINTON emails in order to protect STATE interests and those of CLINTON.”<sup>5</sup>

The *quid pro quo* in question was allegedly proposed during a 2015 phone conversation between Under Secretary Kennedy and Brian McCauley, a former Deputy Assistant Director of the FBI’s International Operations Division.<sup>6</sup> Both the FBI and the State Department have publicly sought to downplay the significance of the *quid pro quo* negotiation in light of the fact that it did not come to fruition. Additionally, the State Department insists that Under Secretary Kennedy’s purpose for reaching out to the FBI was to appeal the determination that the document in question contained classified information, as opposed to seeking to withhold the document entirely. On October 18, 2016, Assistant Secretary for Legislative Affairs Julia Frifield wrote: “There was never any discussion of withholding the document from the public entirely for any reason, the plan was always to redact it appropriately and release it online.”<sup>7</sup> Deputy Assistant Director McCauley, however, has stated privately<sup>8</sup> and publicly<sup>9</sup> that Under Secretary Kennedy talked about hiding the document “in the basement” of the Department. These statements and pieces of testimony are entirely incompatible, and the Committee is seeking to determine what actually happened.

Yesterday, Deputy Assistant Director McCauley stated he was not interviewed by the FBI’s Office of Professional Responsibility.<sup>10</sup> Nevertheless, the FBI indicated in a public statement released last Saturday that it conducted an internal review of this matter. According to the FBI’s statement, “Although there was never a *quid pro quo*, these allegations were nonetheless referred to the appropriate officials for review.”<sup>11</sup>

The Committee seeks to better understand whether the Bureau adequately investigated the allegations of a proposed *quid pro quo* with respect to the November 18, 2012, email, or any other emails sent or received on Secretary Clinton’s private server. To assist the Committee, please produce the following documents as soon as possible, but no later than noon on October 27, 2016:

1. All documents and communications referring or relating to the FBI’s review of the alleged *quid pro quo*, including documents sufficient to show:

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<sup>5</sup> FBI FD-302a interview summary, [FBI Records Management Division official] (Jul. 30, 2015), at 3.

<sup>6</sup> Matt Zapposky, ‘I need a favor’: FBI official at center of alleged Clinton email ‘quid pro quo’ speaks out, WASH. POST, Oct. 19, 2016.

<sup>7</sup> Letter from Julia Frifield to Jason Chaffetz (Oct. 18, 2016), at 1.

<sup>8</sup> “KENNEDY further stated that the ‘B9’ classification would allow him to archive the document in the basement of DoS never to be seen again.” FBI FD-302a interview summary, Brian McCauley (Aug. 5, 2015), at 1.

<sup>9</sup> ““He said he would ‘bury it in a B9 folder in the basement of the State Department,’” McCauley said, while adding that he could be misremembering the number or code Kennedy used – an apparent reference to an exemption under the Freedom of Information Act.” Josh Gerstein, *Ex-FBI agent details origin of Clinton email ‘quid pro quo’ claim*, POLITICO, Oct. 18, 2016.

<sup>10</sup> Matt Zapposky, ‘I need a favor’: FBI official at center of alleged Clinton email ‘quid pro quo’ speaks out, WASH. POST, Oct. 19, 2016.

<sup>11</sup> Statement of Federal Bureau of Investigation, Oct. 15, 2016.

- a. Who at the FBI made the referral;
  - b. To whom the referral was made;
  - c. The officials responsible for the review;
  - d. Who the results of the review were reported to;
  - e. Whether any discipline was recommended or proposed in connection with the review, and if so, what discipline was proposed and on what date; and
  - f. Whether the Department of Justice was informed of the review or played any role in it.
2. All documents and communications referring or relating to requests from Under Secretary Kennedy to change the classification of the November 18, 2012, email, including documents sufficient to show:
- a. When each contact took place;
  - b. The manner of the contact;
  - c. Who was contacted;
  - d. Who those FBI officials informed of Kennedy's request;
  - e. Who at the FBI, including yourself, was consulted in the decision; and
  - f. Who made the final determination of the November 18, 2012, email's classification.
3. All documents and communications referring or relating to requests from any State Department official to change the classification of any of Secretary Clinton's emails, including documents sufficient to show for each request:
- a. Which emails the request regarded;
  - b. When the request took place;
  - c. Who at the State Department made the request;
  - d. Who at the FBI received the request;
  - e. Who made the decision regarding the request; and
  - f. When the decision was made.

The Honorable James Comey

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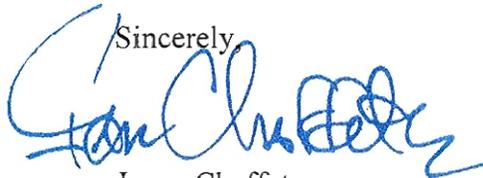
In addition, please make Deputy Director Andrew McCabe and any other officials with relevant information available to brief Committee staff as soon as possible on its review of this matter.

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. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets 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, if possible, to receive all documents in electronic format.

Please have your staff contact Tristan Leavitt of Chairman Chaffetz' staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

## Responding to Committee Document Requests

1. In complying with this request, you are required to 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 individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that 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 format 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 File ("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 to the Committee 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.
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 this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. 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), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. 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.
13. 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.
14. 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, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. 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, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered 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.

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.

### **Definitions**

1. The term “document” 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” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request 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” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” 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.
6. The term “referring or relating,” with respect to any given subject, means 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” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.