

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

October 27, 2016

Mr. Andrew McCabe
Deputy Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Deputy Director McCabe:

News accounts have raised questions about a potential conflict of interest related to donations from the political action committee (PAC) of Virginia Governor Terry McAuliffe, a longtime fundraiser for the Clintons, to the state Senate campaign of your wife, Dr. Jill McCabe.¹

According to reports, Governor McAuliffe and others met with you and your wife on March 7, 2015,² five days after it was publicly revealed that Secretary Clinton used a personal email account to conduct government business as secretary of state.³ At the time, you served as Assistant Director in Charge of the FBI's Washington Field Office. The FBI has released a public statement that when your wife considered running for the Senate of Virginia, you "consulted with top FBI headquarters and field office ethics officers for guidance, including briefings on the Hatch Act, to prevent against any actual or potential conflict-of-interest, in the event she decided to go forward."⁴

In the spring and summer of 2015, the FBI interacted with multiple agencies regarding Secretary Clinton's emails. In April or May 2015, Under Secretary of State for Management Patrick Kennedy began contacting officials in the FBI's National Security Branch, which you headed prior to serving as head of the Washington Field Office.⁵ Under Secretary Kennedy

¹ Devlin Barrett, *Clinton Ally Aided Campaign of FBI Official's Wife*, WALL ST. J., Oct. 24, 2016, available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>.

² *Id.*

³ Michael Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, N.Y. TIMES, Mar. 2, 2015, available at <http://www.nytimes.com/2015/03/03/us/politics/hillary-clintons-use-of-private-email-at-state-Dep't-raises-flags.html>.

⁴ Geoff Earle, *Clinton ultra-loyalist gave \$500,000 to campaign of wife of FBI deputy director who oversaw probe into Hillary's emails*, DAILY MAIL (UK), Oct. 24, 2016, available at <http://www.dailymail.co.uk/news/article-3867176/Clinton-ultra-loyalist-gave-500-000-campaign-wife-FBI-deputy-director-oversaw-probe-Hillary-s-emails.html>.

⁵ E.g., FBI FD-302a, David Hardy, Section Chief, Record/Info. Dissemination Section, Records Mgmt. Div., FBI (Jul. 30, 2015), at 2.

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pressured FBI officials to reverse a decision regarding an email deemed by the FBI to contain classified information.⁶ The email was included in a batch of documents released pursuant to the Freedom of Information Act on May 22, 2015.

In June 2015, the Office of the Inspector General of the Intelligence Community (IC IG) learned that classified information was not redacted in one of the emails released by the State Department on May 22, and that classified information was therefore outside the control of the U.S. government.⁷

On June 25, 2015, IC IG Charles McCullough reportedly contacted an FBI official running the National Counterintelligence and Security Center to report the matter.⁸ The Director of the Center is William Evanina, a former Assistant Special Agent in Charge of the Washington Field Office who, like you, had also served in the FBI's National Security Branch.⁹ Mr. McCullough was advised to make a referral to the FBI's National Security Branch in accordance with 50 U.S.C. § 3381(e), which requires that the FBI be advised immediately of any information which indicates classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power.¹⁰

On July 6, 2015, Mr. McCullough referred the matter to the FBI.¹¹ Four days later, the FBI opened its investigation,¹² reportedly after discussions between Director Comey and National Security Branch Executive Assistant Director John Giacalone, your successor in that position.¹³ On July 30, 2015, the FBI announced your promotion from the Washington Field Office to the position of Associate Deputy Director,¹⁴ a role you served in until February 1, 2016.¹⁵

⁶ *Id.*; see also FBI FD-302a, Brian McCauley, Deputy Assistant Dir., Int'l Operations Div., FBI (Jul. 30, 2015), at 1-2; FBI FD-302a, Brett Gittleston, Director, Office of Info. Res. Mgmt., State Dep't (Jul. 30, 2015), at 4.

⁷ FBI FD-302a, Frank Rucker, Inspector, Office of Inspector Gen. of Intelligence Community (Jul. 23, 2015), at 1-2.

⁸ Carol D. Leonnig, Karen Tumulty, and Rosalind S. Helderman, *Clinton's team went from nonchalant to nervous over e-mail controversy*, WASH. POST, Aug. 14, 2015, https://www.washingtonpost.com/politics/how-clintons-team-went-from-nonchalant-to-nervous-over-e-mail-controversy/2015/08/14/347f1066-405e-11e5-9561-4b3dc93e3b9a_story.html; see also *Oversight of the State Dep't: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. 201-202 (July 7, 2016) (statement of Charles McCullough, Inspector Gen. for the Intelligence Community).

⁹ About Us: Leadership: NCIX Bill Evanina, National Counterintelligence Executive and Director of the National Counterintelligence and Security Center, Mr. William "Bill" Evanina, <https://www.ncsc.gov/about/director.html> (last visited Oct. 26, 2016).

¹⁰ FBI Letterhead Memorandum, Clinton E-mail Investigation (July 2016), at 1.

¹¹ FBI Letterhead Memorandum, Clinton E-mail Investigation (July 2016), at 1.

¹² *Id.*

¹³ Massimo Calabresi, *Inside the FBI Investigation of Hillary Clinton's E-Mail*, TIME, Mar. 31, 2016, available at <http://time.com/4276988/jim-comey-hillary-clinton>.

¹⁴ Press Release, Federal Bureau of Inv., FBI Announces Executive Appointments (July 30, 2015), available at <https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-executive-appointments-1>.

¹⁵ Press Release, Federal Bureau of Inv., Andrew McCabe Named Deputy Director of the FBI (Jan. 29, 2016), available at <https://www.fbi.gov/news/pressrel/press-releases/andrew-mccabe-named-deputy-director-of-the-fbi>.

Between September 30 and October 29, 2015, Governor McAuliffe's PAC Common Good VA donated \$450,000 to your wife's state senate campaign,¹⁶ while the Democratic Party of Virginia made additional in-kind contributions totaling \$207,788.¹⁷ Much of that money was raised by McAuliffe following a June 26, 2015, Fairfax, Virginia fundraiser headlined by former Secretary Clinton.¹⁸ Some of the money raised from Clinton associates, such as Doug Band¹⁹ and Robert Johnson, was donated prior to the commencement of the FBI's investigation.²⁰ However, a significant amount was donated after the FBI had initiated its investigation and begun meeting with Secretary Clinton's attorneys in August 2015.²¹

The FBI stated it was not until you were promoted to the position of Deputy Director that you "assumed for the first time . . . an oversight role in the investigation into Secretary Clinton's emails."²² There are outstanding questions, however, regarding a possible conflict of interest in this case. To address those questions, please provide the following documents and information as soon as possible, but no later than noon on November 10, 2016:

1. All documents referring or relating to the ethics guidance received from the FBI regarding your wife's state senate campaign.
2. When you first became aware the State Department was pressuring the FBI to reverse its decision regarding the classification of one of Secretary Clinton's emails, and how you became aware, including any related documents and communications.
3. Whether you ever had any contact with the State Department regarding the classification of any of Secretary Clinton's emails, including any related documents and communications.
4. When you first became aware the FBI had opened an investigation into Secretary Clinton's email server, and how you became aware, including any related documents and communications.

¹⁶ http://www.vpap.org/candidates/257116/donor/248345/?start_year=all&end_year=all&contrib_type=A.

¹⁷ http://www.vpap.org/candidates/257116/donor/147878/?start_year=all&end_year=all&contrib_type=B.

¹⁸ Rachel Weiner, *Hillary Clinton making first campaign stop in Virginia*, WASH. POST, May 13, 2015.

¹⁹ http://www.vpap.org/committees/248345/donor/164161/?start_year=all&end_year=all&contrib_type=all.

²⁰ http://www.vpap.org/committees/248345/donor/165569/?start_year=all&end_year=all&contrib_type=all.

²¹ E.g., http://www.vpap.org/committees/248345/donor/168344/?start_year=all&end_year=all&contrib_type=all;

http://www.vpap.org/committees/248345/donor/223772/?start_year=all&end_year=all&contrib_type=all;

http://www.vpap.org/committees/248345/donor/274418/?start_year=all&end_year=all&contrib_type=all. See also

Laura Vozzella, *Virginia's Democratic Party relies heavily on one donor – a New Yorker*, WASH. POST, Oct. 30, 2015.

²² Devlin Barrett, *Clinton Ally Aided Campaign of FBI Official's Wife*, WALL ST. J., Oct. 24, 2016, available at <http://www.wsj.com/articles/clinton-ally-aids-campaign-of-fbi-officials-wife-1477266114>.

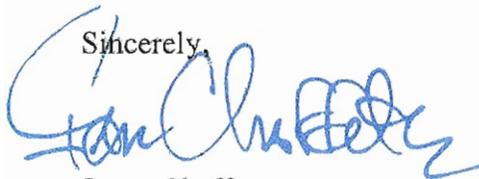
5. Whether personnel in the Washington Field Office provided any support to the investigation prior to your promotion to the position of Associate Deputy Director, and if so:
 - a. The number of employees;
 - b. Their roles within the Washington Field Office; and
 - c. The support they provided.
6. Whether you were present for any briefings on the investigation during your tenure as Associate Deputy Director.

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.