

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

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

January 13, 2017

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

Dear Director Comey:

On October 20, 2016, I wrote you regarding the Committee's investigation of allegations that a "*quid pro quo*" was agreed to between the FBI and the Department of State regarding Secretary Clinton's emails, as well as the Committee's investigation of the adequacy of the FBI's internal review of those allegations. I also requested that the FBI produce related documents, including those surrounding the agency's internal review. These are central to the Committee's investigation, particularly as former Deputy Assistant Director (DAD) Brian McCauley – the FBI employee involved in the initial *quid pro quo* agreement with Under Secretary of State Patrick Kennedy – told the press he was never interviewed by the FBI's Office of Professional Responsibility regarding the matter.<sup>1</sup>

On November 29, 2016, the FBI produced some of the documents I requested. Unfortunately, those documents only raised more questions. For example, it appears that even after learning of Section Chief David Hardy's allegation in a July 30, 2015, interview that DAD McCauley "‘pressured’ him to change the classified email to unclassified,"<sup>2</sup> the FBI investigative team which was informed of this information took no immediate steps to follow up on it, such as seeking to interview DAD McCauley, informing the FBI's Office of Professional Responsibility, or informing the FBI's Inspection Division.<sup>3</sup>

According to the timeline the FBI provided, the FBI's Inspection Division only became aware of the allegation a month later as a result of the Office of Inspector General (OIG) for the Department of State investigating Under Secretary Kennedy's contacts with the FBI regarding its classification decisions. The FBI's letter to the Committee states:

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<sup>1</sup> Matt Zapotosky, *'I need a favor': FBI official at center of alleged Clinton email 'quid pro quo' speaks out*, WASH. POST, Oct. 19, 2016.

<sup>2</sup> Fed. Bureau of Investigation, FD-302a interview summary of David Hardy (July 30, 2015), at 2.

<sup>3</sup> Letter from Jason V. Herring, Acting Assistant Dir., Office of Cong. Affairs, Fed. Bureau of Investigation, to the Hon. Jason Chaffetz, Chairman, Comm. on Oversight & Gov't Reform (Nov. 29, 2016), at 1.

[O]n August 28, 2015, the State Department OIG contacted SC Hardy requesting to speak with him about the meeting with Under Secretary Kennedy regarding the classification decision of an email containing FBI information. SC Hardy advised the FBI's Inspection Division of State Department OIG interest in the matter. FBI Inspection Division then advised the investigative team as well as the Justice Department's Justice Management Division.<sup>4</sup>

The letter continues: "On approximately August 31, 2015, the FBI's investigative team met with the FBI's Inspection Division to discuss what, if any, internal actions were necessary to address the request of DAD McCauley regarding additional overseas resources."<sup>5</sup> Before anyone at the FBI had even spoken to DAD McCauley regarding his *quid pro quo* agreement with Under Secretary Kennedy – or had *any* firsthand information from any actual participant in the negotiation – the Inspection Division then declined to conduct a review.

This timeline brings into question the seriousness with which these allegations were treated by the FBI, including the FBI's investigative team, which subsequently interviewed DAD McCauley on September 3, 2015. It also raises questions regarding what role the Justice Department played after being notified of the State Department OIG's request to interview Mr. Hardy, which ultimately took place on December 15, 2015.

Remarkably, although on November 20, 2015, the FBI's Inspection Division finally provided the State Department OIG with some emails regarding the interactions between Mr. Hardy and the State Department, the Inspection Division did not inform the State Department OIG of the *quid pro quo* conversation.<sup>6</sup> According to the State Department OIG, Mr. Hardy also failed to raise the issue in his December 15, 2015, interview.<sup>7</sup> This prevented the State Department OIG from interviewing Under Secretary Kennedy about the *quid pro quo* conversation or DAD McCauley's allegation that Kennedy was seeking to "archive the document in the basement of [State] never to be seen again."<sup>8</sup> The FBI summary of its own December 21, 2015, interview of Under Secretary Kennedy also makes no mention of asking him about the *quid pro quo* conversation or alleged statement regarding burying documents, raising questions regarding whether the FBI sought to minimize its own role in the incident.<sup>9</sup>

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<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Letter from Jason V. Herring, Acting Assistant Dir., Office of Cong. Affairs, Fed. Bureau of Investigation, to the Hon. Jason Chaffetz, Chairman, Comm. on Oversight & Gov't Reform (Nov. 29, 2016), attachment.

<sup>7</sup> Briefing by Office of Inspector Gen., Dep't of State, for staff, Comm. on Oversight & Gov't Reform (Nov. 2, 2016). Apparently the State Department OIG only became aware of the issue in October 2016, when the Committee made the information public.

<sup>8</sup> Fed. Bureau of Investigation, FD-302a interview summary of Brian McCauley (Sept. 3, 2015), at 1.

<sup>9</sup> Fed. Bureau of Investigation, FD-302a interview summary of Patrick Kennedy (Dec. 21, 2015).

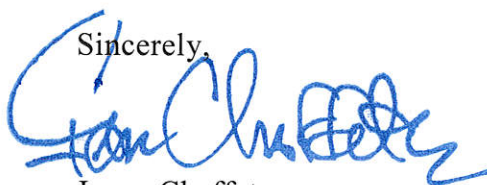
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These serious issues require continued investigation by this Committee, which is also examining Under Secretary Kennedy's role in the matter. Please provide the Committee as soon as possible with complete responses to the requests in my October 20, 2016, letter.<sup>10</sup>

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.

Please have your staff contact Tristan Leavitt of my 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 Minority Member

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<sup>10</sup> Specifically, the Committee awaits information on who precisely made the determination that the Inspection Division needed to be informed of the *quid pro quo* allegation (question 1a); who in the Inspection Division met with the FBI's investigative team on August 31, 2015 (question 1b) and made the final decision on opening a review (question 1c); whether the *quid pro quo* allegation was communicated any higher than the Inspection Division (question 1d); and whether the Justice Department was informed of the *quid pro quo* allegation, or merely of the request to interview Mr. Hardy (question 1f). Similarly, the Committee awaits confirmation regarding whether the interactions heretofore described by the FBI are the only requests responsive to questions 2 and 3.

## 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,  
SENTHOUR, 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.