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Congress of the United States

House of Representatives Select Committee on Benghazi

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April 23, 2015

Mr. David E. Kendall
Williams & Connolly LLP
725 12th Street, N.W.
Washington, DC 20005

Dear Mr. Kendall:

Thank you for your letter of April 22, 2015. As you know from our previous conversations and correspondence, the Committee appreciates Secretary Clinton's willingness to provide testimony to the Select Committee. Furthermore, the Committee shares Secretary Clinton's desire that she appear before the Committee as soon as is practicable. To that end, I have consistently, and without exception, said the Committee would schedule the Secretary's appearance within 30 days of receiving assurance all documents needed to have a constructive conversation with the Secretary are in the Committee's possession. To date no one has been willing to make that assurance and the reasons for that are manifest below.

You noted accurately both you and Ranking Member Rep. Elijah Cummings offered to make Secretary Clinton available in November of 2014. To be clear, in November of 2014 the Committee was in possession of merely eight (8) of Secretary Clinton's emails, out of a now known universe of at least 300 emails. Furthermore, the Department of State has made several thousand pages of documents available to the Committee after November of 2014 including commitments to produce more even just this week, two years after Congress first tried to secure documents related to the Accountability Review Board ("ARB"). In fact, the Department of State has admitted Congress still does not have the full universe of documents related to its requests.

Moreover, had the Committee accepted the offer of a November 2014 hearing with Secretary Clinton said hearing would have taken place: (1) before Secretary Clinton returned her emails from her tenure as Secretary of State to the public record, (2) before it became apparent Secretary Clinton exclusively relied upon private email with which to conduct official business, (3) before it became apparent Secretary Clinton housed a personal server over which she had exclusive control, and (4) before Secretary Clinton's representatives provided her public records hosted on said server to the Department of State as opposed to purely personal emails, which the Committee has no interest in.

Simply put, thank goodness the Committee did not schedule Secretary Clinton's appearance when some asked us to, or else that hearing would have been woefully and now obviously premature. And to clarify any perceived ambiguities, the Committee never intended to interview Secretary Clinton privately about Benghazi any more than the Committee intended to interview Secretary Clinton prior to having all relevant documents related to Benghazi. Our offer to interview Secretary Clinton privately was solely with respect to her unusual, if not unprecedented, email arrangement with herself and to satisfy the Committee the public record was complete.

As stated in our March 31, 2015, letter to you, the Committee believed a transcribed interview should be an option for Secretary Clinton should she believe it necessary to best protect her privacy and to facilitate a discussion of certain technical matters. Indeed, Secretary Clinton's own statement, included as Attachment A to your letter, specifically notes concerns she had about "broadcasting specific technical details about past and current practices" in a public format. Correspondingly, the Committee was and remains amenable to a transcribed interview either in Washington, DC or, if Secretary Clinton prefers, at another location convenient for Secretary Clinton so as to avoid interfering with any scheduled events. In other words, the Committee is willing to travel to Secretary Clinton if that would make the scheduling of this interview easier for the Secretary.

If Secretary Clinton's previously cited concerns about "broadcasting specific technical details about past and current practices" have been assuaged, the Committee is certainly willing to receive her testimony in public with respect to the matters raised in my March 31, 2015 letter. Of course, transcribed interviews are frequently used to ensure all relevant questions have been asked and the witness has been afforded all the time needed to answer in full. So, if the Secretary were to elect a public hearing the Committee would anticipate the hearing lasting until all relevant questions have been asked by members on both sides of the aisle, and the Secretary has been afforded all the time needed to answer said questions or make whatever material she deems relevant part of the record.

Discussing Secretary Clinton's exclusive use of private email with which to conduct public business is a necessary predicate to discussing the facts surrounding the terrorist attacks in Benghazi. This is so for at least two reasons: (1) ensuring the public record is complete before asking questions of a witness or that witness being expected to provide an answer is a reasonable and necessary prerequisite to facilitate a constructive conversation, and (2) asking members on either side of the aisle to elect between asking questions about the security of our facilities in Benghazi versus asking questions about the security of her personal server and whether any protected information was received or sent via email is an untenable choice.

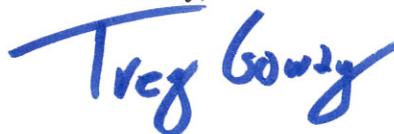
In your April 22, 2015 letter you write in connection with Secretary Clinton's email use and arrangement: "these questions have already been publicly answered by Secretary Clinton". You then cite a press conference wherein Secretary Clinton answered a few questions and correspondence sent after her press conference seeking to clarify certain issues raised during her press conference. Suffice it to say our members have more questions.

For your information and as a courtesy to Secretary Clinton, I am enclosing a sample of the questions I believe remain to be answered in detail with respect to the Secretary's email use, and other Members of the Committee of course will have their own additional questions. As I have previously noted publicly, the House and its Committees have a variety of equities in the Secretary's unique private email arrangement. For its part, the Committee has been charged by the House to review "executive branch activities and efforts to comply with Congressional inquiries into the attacks on United States facilities in Benghazi, Libya," "recommendations for improving executive branch cooperation and compliance with congressional oversight and investigations," and "any other relevant issues relating to the attacks, the response to the attacks, or the investigation by the House of Representatives into the attacks." Some of these questions may bear on such broader issues and equities.

To summarize: (1) the Committee will be pleased to have Secretary Clinton appear in a public hearing to answer questions related to the terrorist attacks in Benghazi as soon as and no later than 30 days after the Committee has a complete record with which to have a constructive conversation with Secretary Clinton; and (2) the Committee has unanswered questions related to the Secretary's unusual email arrangement which directly relate to the completeness of the public record and the Committee would be pleased to hear from Secretary Clinton on these questions in the forum of her choosing: (i) private transcribed interview in Washington, DC, (ii) private transcribed interview at another venue of her choosing more convenient for Secretary Clinton and her schedule, or (iii) in the alternative - if her previously cited concerns about privacy have been mollified - a public hearing wherein the members of the Committee can assure themselves the public record is complete.

Unless we hear differently from you, the Committee will schedule a public hearing with Secretary Clinton in which to discuss ensuring the public record is complete the week of May 18, 2015, and we look forward to coordinating a day that week convenient for Secretary Clinton. If that hearing results in assurances the public record is indeed complete, the Committee will schedule Secretary Clinton's public hearing with respect to the 2012 terrorist attacks in Benghazi no later than June 18, 2015, with specific date being selected after consultation with you.

Sincerely,



Trey Gowdy
Chairman

Cc: The Honorable Elijah E. Cummings, Ranking Member

SAMPLE QUESTIONS FOR SECRETARY CLINTON

Establishment of Private Email Server

- (1) When did you first consider establishing a private email server?
- (2) Why did you first consider establishing a private email server?
- (3) Was the idea to establish a private email server your own, or was it suggested by another person or persons? If it was another, please identify any such persons.
- (4) Did any other persons provide general advice or consultation with respect to the consideration and establishment of a private email server? If so, please identify any such persons.
- (5) Did you seek or obtain advice (officially or unofficially) from any Executive Branch entity or employee with respect to the establishment of a private email server? If so, please provide the advice you obtained.
- (6) Did anyone in the State Department or any other Executive Branch entity approve your use of a private email server for the conduct of official business?
- (7) What direction did you give and to whom to begin the planning and procurement of the private email server?
- (8) Who was actually responsible for carrying out the planning, procurement, and setup of the private email server? Please identify all persons responsible for planning, procurement, and setup of the system.
- (9) Did you or any other person or entity enter into any formal or informal contracts or agreements for the planning and procurement of the private email server?
- (10) How were the private email server and any related equipment funded?
- (11) Were any government funds used directly or indirectly to support the planning and procurement of the private email server and any related equipment?
- (12) From what source were the hardware and software for the private email server and any other related equipment procured?
- (13) When were the hardware, software, and any other related equipment for the private email server actually procured?
- (14) What, if any, vetting was performed on the companies or individuals providing the hardware and software for the private email server?

Operation and Security of Private Email Server

- (15) Please identify any and all internet service or other technology providers who provided services to support the Clintonemail.com domain, and describe the services performed.
- (16) Were the hardware, software, and other related equipment for the private email server scanned for security purposes prior to coming online? If so, please identify the parties performing the scan and the nature of any security review conducted prior to placing the system online.
- (17) Please identify any persons who were responsible for establishing, managing, maintaining, monitoring, or providing physical or cyber security for your private server and any related systems.
- (18) How was the IT equipment you used managed, maintained and monitored?
- (19) Were there logs of those who managed, maintained, serviced, or secured the server?
- (20) Were there logs of the actual management, maintenance, service or other access to the private server and any related systems?
- (21) If any logs were kept, do those logs or any related records still exist?
- (22) What background checks, if any, were conducted on those who established, managed, maintained, or provided physical or cyber security or any other services for the private email server and any related hardware or software?
- (23) What background checks, if any, were conducted for those who provided services or maintenance with respect to any other outside systems through which traffic from the Clintonemail.com domain was designed to be routed?
- (24) What, if any, steps were taken to identify potential cyber threat information contained in traffic flowing through the Clintonemail.com domain, including the private email server and any related hardware or software?
- (25) What, if any, steps were taken to identify potential cyber threat information on any other electronic systems through which traffic to or from the Clintonemail.com domain was designed to be routed?
- (26) Were any potential cyber threats detected or data breaches known to have occurred on the private email server or any related hardware or software under your control?

- (27) Were any potential cyber threats detected or data breaches known to have occurred on any other electronic systems through which traffic from the Clintonemail.com domain was designed to be routed?
- (28) Was any review conducted by any cybersecurity experts – either routinely or in specific instances – of the private email server and any related hardware and software to determine whether any cyberattack, intrusion, or data breach had actually taken place?
- (29) Was any review conducted by any cybersecurity experts – either routinely or in specific instances - with respect to any other outside systems through which traffic from the Clintonemail.com domain was designed to be routed to determine whether any cyberattack, intrusion, or data breach had actually taken place?
- (30) Did the private email server and related hardware or software use encryption for incoming or outgoing electronic data, including emails?
- (31) Did the private email server and related equipment use encryption for data stored on the server itself or any associated hardware?
- (32) Were you ever advised to use encryption for data on the private email system, and if so by whom?
- (33) Where were the server and associated equipment physically located during your time as Secretary of State?
- (34) Did you only have one server during your time in office as Secretary of State?
- (35) Who provided physical security for the server and related equipment in your custody and control?
- (36) Did you consult or are you aware whether anyone consulted with the Department of State, the U.S. Secret Service, the Federal Bureau of Investigation, the Department of Homeland Security, or the National Security Agency with respect to any issues relating to physical or cyber security for the private email server or any associated electronic systems?
- (37) Did you perform or direct the performance of any review of the security standards used by the Department of State to protect electronic systems against the standards used on your private email system?

General Use of Private Email Server

- (38) When was the private email server put into use?

- (39) When did you personally begin to use the private email server?
- (40) How many email accounts did you have?
- (41) What email address was provided to higher level State Department employees if they wanted to communicate with you directly?
- (42) Did you communicate with Ambassador Chris Stevens by email?
- (43) Approximately how many emails would you receive in a day?
- (44) What was your manner and practice in responding to emails?
- (45) Did anyone else monitor your email accounts? If so, who else?
- (46) Did you routinely or even occasionally blind copy others in your responses?
- (47) How many electronic devices capable of sending and receiving email did you utilize during your tenure as Secretary of State?
- (48) Were the devices used to receive email during your tenure as Secretary of State all provided by the Department of State? If not, who provided the devices, and what steps were taken to ensure their security?
- (49) How many accounts did you monitor from these devices?
- (50) Were you able to access emails from Clintonemail.com while traveling by government aircraft?
- (51) Who else did you communicate with on your private account – private to private – with respect to official business in emails?
- (52) Did you ever communicate with foreign officials on your personal email?
- (53) Did you ever send or receive classified information via your personal email?
- (54) Did you ever send or receive Sensitive But Unclassified information via your private email?
- (55) Did anyone within the State Department ever review any emails using your private system to determine or verify whether they included classified or Sensitive But Unclassified information?
- (56) How did you determine who would have a Clintonemail.com email address?
- (57) How many other Department of State employees had Clintonemail.com email addresses?
- (58) To your knowledge, was any official business conducted by other Department of State employees using Clintonemail.com email addresses?
- (59) How many non-Department of State officials had Clintonemail.com email addresses?

- (60) What policies/rules/guidelines did you or anyone else provide to other Clintonemail.com email users?

Use of Private Email Server for Official Business

- (61) Who at the Department of State knew you only used personal email with which to conduct official business?
- (62) Did anyone suggest you utilize an official email address?
- (63) During your tenure as Secretary of State, did anyone at the State Department counsel you not to use a private email account for official business?
- (64) During your tenure as Secretary of State, did any other administration or government official outside the State Department counsel you not to use a private email account for official business, or otherwise raise or discuss any questions or issues with you regarding your use of a private email server? If so, please provide details.
- (65) Were any issues related to the general reliability of retention of State Department emails containing official records brought to your attention during your tenure as Secretary?
- (66) Who assured you that all emails reflecting official business would be captured when you forwarded emails to a state.gov address?
- (67) What steps did you take to ensure emails sent or received by other Department of State employees with a Clintonemail.com address were preserved for public record?
- (68) What, if any, steps did you take to verify that the State Department system in fact was capturing emails relating to official business?
- (69) What was your understanding of the legal framework, including Department of State rules and regulations and Administration policies, related to the use of personal email and the responsibility to preserve the public record?
- (70) What if any guidance did you provide to other Department of State employees with respect to the retention of records relating to official business that might exist on the Clintonemail.com system?
- (71) Who at the Department of State had access to your Clintonemail.com account?
- (72) Did anyone at the Department of State ask to access or archive your official emails at any point during your tenure?

- (73) How were Freedom of Information Act and congressional requests for your emails handled during your tenure as Secretary of State?
- (74) Were you aware of congressional requests for documents or materials related to the 2012 Benghazi attacks during your tenure as Secretary of State? If so, when did you become aware of the requests for these documents and materials?
- (75) Prior to your departure from the Department of State, were you ever asked to identify records or did you offer to provide records potentially responsive to congressional requests for documents or materials related to the 2012 Benghazi attacks? If so, what steps did you take to identify and produce such records?
- (76) Were you aware of Freedom of Information Act requests for documents and materials related to the 2012 Benghazi attacks? If so, when did you become aware of the requests for these documents and materials?
- (77) Prior to your departure from the Department of State, were you ever asked to identify records or did you offer to provide records potentially responsive to Freedom of Information Act requests for documents or materials related to the 2012 Benghazi attacks? If so, what steps did you take to identify and produce such records?
- (78) Were you ever asked to provide or did you ever offer to provide records to the Benghazi Accountability Review Board?
- (79) Were you aware a Committee of Congress inquired about your use of personal email with which to conduct official business?
- (80) Were you ever contacted in connection with providing any response to a Committee of Congress with respect to your use of personal email with which to conduct official business?
- (81) Did you ever email President Obama on your personal email?
- (82) Did the President ever email you on your personal email?
- (83) When did you decide to continue to retain official records in your possession on the Clintonemail.com system after your departure from the Department of State?
- (84) What was the rationale for retaining official records on the Clintonemail.com system after your separation from the Department of State?
- (85) Did you consult any legal authorities or obtain any formal legal advice in connection with the retention of public records at the time of your separation from the Department of State?

- (86) Did you consult or coordinate with anyone in the Department of State with respect to your decision to retain official records?
- (87) Did anyone from the State Department provide any advice or render any opinion sanctioning such retention?
- (88) Did anyone at Department of State ask for your official emails when you separated from the Department of State?
- (89) When did you cease using the Clintonemail.com address used during your tenure as Secretary of State?
- (90) Were you aware of requests from the House Select Committee on Benghazi for documents and materials relating to the 2012 attacks in Benghazi? If so, when did you become aware of the requests for documents and materials?
- (91) Were you ever contacted specifically with respect to identifying records potentially responsive to requests from the House Select Committee on Benghazi for documents or materials related to the 2012 Benghazi attacks, or did you offer to provide such records? If so, what steps did you take to identify and produce such records?

Return of Official Records

- (92) Prior to being contacted by the State Department in 2014, did you take any steps to return official records in your possession to the Department of State?
- (93) After your departure from the Department of State, when did you first learn the Department was interested in the return of official records that were in your possession?
- (94) How did you learn of that request?
- (95) What were you told was the reason for the request?
- (96) Did you have any different understanding of the reason for the request than any rationale communicated to you by the Department of State?
- (97) What actions did you take upon learning of the request?
- (98) Did you have any conversations with Secretary of State Kerry about your retention of official records at the time of your separation from Department of State?
- (99) Who was responsible for reviewing information from your private email system to determine which emails were personal and which were official?

- (100) Who, if anyone, provided guidance to those responsible for reviewing your emails?
- (101) Did you personally provide any guidance with respect to the review of emails on your private system? If so, what was that guidance?
- (102) Who determined the framework by which the information on your server was actually evaluated by your private attorneys?
- (103) What was the methodology used to evaluate information from your private email system to determine which emails were personal and which were official?
- (104) Were you personally aware of the methodology by which your records were reviewed at the time of the review?
- (105) Were there any written criteria memorializing the standards used in the review to determine which emails were personal and which were official?
- (106) Were those persons conducting the review of your emails compensated? And if so, by which person or entity?
- (107) What expertise did persons involved in the review of your emails have (either by providing direction or by performing actual review) in Federal Records Act standards and requirements?
- (108) If emails from your private email system were personally reviewed to determine whether they included information related to official business, please identify all individuals who performed that review.
- (109) If personal inspection was employed, did the reviewers have any fiduciary or professional duties to you personally that may have affected their ability to objectively review material in the public interest?
- (110) What, if any, steps were taken to review records of emails by other State Department employees on your private server?
- (111) If emails of other employees were reviewed, was the review conducted in the same manner as the review of your emails? If the review was different, please explain how and why.
- (112) Were any emails mixed-use emails wherein both personal and official work were discussed?
- (113) How were those mixed-use emails resolved?
- (114) If a particular email caused a dispute among advisers as to whether it should be turned over the State Department or kept secret, who resolved that dispute?
- (115) Who ultimately determined which emails were private and which were official?

- (116) On March 23, 2015, your counsel received a letter from the Under Secretary of State for Management providing written authorization for you to retain a copy of your emails related to official business. How and when did you originally request authorization to retain these records?
- (117) Please list and describe any meetings or other conversations that may have taken place with the Department of State in connection to your request for authorization to retain these records.
- (118) Why did you not previously seek authorization to retain these records?

Data Retention

- (119) Were any policies or practices (written or unwritten) in place with respect to deletion, overwriting or preservation of emails on your private email system during your active use of the Clintonemail.com account while Secretary of State? If so, what were those policies?
- (120) How frequently and in what form were backups performed on data residing on your private email system during and after your tenure as Secretary of State?
- (121) Was your private email system set either not to retain or to affirmatively overwrite any data after a certain period during your tenure as Secretary of State? If so, please describe the relevant system settings.
- (122) With respect to emails or other records determined by your own review in 2014 not to include records of official business, whose decision was it to delete or overwrite such emails on your private email system?
- (123) When was that decision made?
- (124) Who was consulted before that decision was made?
- (125) Was the Department of State aware of your decision not to preserve emails you unilaterally determined not to relate to official business prior to their deletion?
- (126) Did anyone advise you not to delete or overwrite data from the private server and related equipment?
- (127) What was the rationale for deleting or overwriting emails from the server at that particular time?
- (128) Why did you wait until recently to delete or overwrite such emails?

- (129) Were emails or other records from other Department of State employees deleted or overwritten? If so, were any such emails produced to the Department of State prior to being deleted or overwritten?
- (130) Can the server and associated equipment be searched now for recovery of those deleted emails?
- (131) How were the emails actually deleted from or overwritten on your server?
- (132) When, and by whom, was the information deleted or overwritten?
- (133) Were any affirmative steps taken to further destroy or overwrite electronic data relating to deleted emails on the server or any related equipment?
- (134) Were any affirmative steps taken to destroy any backups that may exist or have existed of emails from the server or any related equipment?
- (135) Were any affirmative steps taken to destroy or direct the destruction of any additional copies of stored communications that may exist on other electronic systems through which email from the Clintonemail.com domain was designed to be routed, or otherwise transited?
- (136) You have stated publicly that you decided not to keep personal emails. Your attorney later informed us that no emails of any kind now exist on the hardware associated with your private email system. Did the "personal" emails still exist on the hardware at the time of your public statement?