OIG Office of Inspector General
U.S. Department of State • Broadcasting Board of Governors

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July 17, 2015

MEMORANDUM

TO: Patrick F. Kennedy, Under Secretary for Management, Department of State

FROM: Steve A. Linick, Inspector General, Department of State
I. Charles McCullough, III, Inspector General, Intelligence Community

SUBJECT: Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-04)

The Office of Evaluations and Special Projects within the Office of Inspector General (OIG) is reviewing the use of personal communications hardware and software by five Secretaries of State and their immediate staffs. This work includes an evaluation of the Department of State's ongoing efforts to publish the emails of former Secretary of State Clinton, which were provided to the Department in December 2014. To assist in the review, OIG consulted with the Office of the Inspector General of the Intelligence Community (ICIG).

ICIG staff conducted a preliminary assessment of the Department's ongoing Freedom of Information Act (FOIA) process for the Clinton emails, including 296 emails publicly released by the Department on May 22, 2015. This preliminary assessment identified four areas that require immediate attention by Department leadership. Attachment A contains OIG's and ICIG's Memorandum, dated June 19, 2015, which makes four recommendations related to these areas. Attachment B contains your June 25, 2015, and July 14, 2015, responses. Based on these responses, OIG and ICIG consider two of these recommendations to be closed, whereas the other two remain unresolved. Attachment C contains more detailed information about the status of each recommendation.

On June 29, 2015, OIG and ICIG sent you a follow-up memorandum providing additional information supporting our concerns about the FOIA process used for the Clinton emails (see Attachment D). Since then, ICIG has received confirmation from IC FOIA officials that several of these emails contained classified IC information, though they were not marked as classified. In addition, at least one of these emails has been released to the public and can be accessed on the Department's FOIA website. OIG and ICIG will continue to assess whether further actions need to be taken to ensure that no additional classified information is publicly released.

Attachments: As stated.

cc: D(MR) - Heather A. Higginbottom

ATTACHMENT A

OIG and ICIG Memorandum to the Department, Dated June 19, 2015

OIG Office of Inspector General
U.S. Department of State • Broadcasting Board of Governors

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June 19, 2015

MEMORANDUM FOR UNDER SECRETARY KENNEDY

FROM: Steve A. Linick, Inspector General, Office of Inspector General, Department of State
I. Charles McCullough, III, Inspector General, Intelligence Community

SUBJECT: Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-04)

Pursuant to a notification letter dated April 16, 2015, the Office of Evaluations & Special Projects within the Office of the Inspector General (OIG) is reviewing the use of personal communications hardware and software by five Secretaries of State and their immediate staffs. On June 4, 2015, OIG notified the Department of State (Department) that this review would include an evaluation of the Department's ongoing efforts to review, categorize, and publish the e-mails of former Secretary of State Clinton, which were provided to the Department in December 2014. To assist in the review, OIG consulted with the Office of the Inspector General of the Intelligence Community (ICIG). As part of the ongoing review, ICIG staff conducted a preliminary assessment of the Department's Freedom of Information Act (FOIA) review process as well as 296 emails released by State FOIA officials on May 22, 2015. This preliminary assessment identified four areas that may require immediate attention by Department leadership. The ICIG Memorandum for the Record containing recommendations and an accompanying cover letter from the Inspector General of the Intelligence Community are attached.

Please provide comments to the ICIG Memorandum and information on actions taken or planned on each of the recommendations, no later than close of business, Friday, June 26, 2015, to Inspector General Steve A. Linick at [redacted] and to Inspector General I. Charles McCullough at [redacted]. If you have any questions about this request, please contact I. Charles McCullough, III at [redacted]. Thank you for your attention to this matter.

Attachments: As stated.

cc: D-MR - Heather A. Higginbottom

INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, DC 20511

15 June 2015

The Honorable Steve Linick
Inspector General
Department of State
2201 C Street, NW (SA-3, Suite 8100)
Washington, DC 20520

Dear Mr. Linick:

(U//~~FOUO~~) Thank you for reaching out to my office to assist you in your current review entitled "Use of Personal Communications Hardware and Software by Five Secretaries of State and Their Immediate Staffs." Thus far, our assistance has been tailored to reviewing State Department's Freedom of Information Act (FOIA) process and how classified information is safeguarded in that process.

(U//~~FOUO~~) Our preliminary review identified four areas that may require immediate attention by State FOIA officials, in coordination with Intelligence Community FOIA officials. Those areas are detailed in the attached memorandum. My team has briefed your team members on these developments and will continue to refine findings and recommendations as the review progresses.

Sincerely,

I. Charles McCullough, III

cc: David Seide, Counselor,
State Department Office of Inspector General

[redacted] General Counsel
Office of the Inspector General of the Intelligence Community

Attachment:
(U) MFR, [redacted] (dtd 15 June, 2015) (U//~~FOUO~~)

OFFICE OF THE INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
INSPECTIONS AND EVALUATIONS DIVISION
WASHINGTON, DC 20511

MEMORANDUM FOR THE RECORD

15 June 2015

PROJECT:	(U) Special Inquiry 2015-001: Assistance to State Department Inspector General Review of Use of Personal Communications Hardware and Software by Five Secretaries of State and Their Immediate Staffs
INSPECTOR:	(U) [redacted]
PURPOSE:	(U//~~FOUO~~) Document Potential Issues Identified in Preliminary Review of the State Department FOIA Process.

(U//~~FOUO~~) The Office of the Inspector General of the Intelligence Community (IC IG) is assisting the State Department IG's office in the above referenced review; focused on the handling of potentially classified material during the State Department Freedom of Information Act (FOIA) review process. I am conducting a preliminary review of the handling of potentially classified material during the State FOIA review process being used to review the 33,000 emails provided by former Secretary Clinton from her personal email server. Thus far, I have identified four areas that may require expedited attention by State FOIA officials, in coordination with IC FOIA officials. Those areas are:

1. (U//~~FOUO~~) **Evaluation of other agencies' equities is not optimal.** State Department is currently relying on retired senior Foreign Service Officers to review for other agencies' equities in FOIA cases. For example, a review of the first set of 296 emails received from former-Secretary Clinton and released on the State Department FOIA website identified material that should have been referred to IC FOIA officials for review prior to release. **Recommend State Department FOIA Office request staff support from IC FOIA offices to assist in the identification of intelligence community equities.**

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(U//~~FOUO~~) Document Potential Issues Identified in Preliminary Review of the State Department FOIA Process.

2. (U//~~FOUO~~) **Storage and distribution of FOIA material is occurring on a SECRET level network.** State Department is using a SECRET level network (ClassNet) to store the 33,000 emails acquired from former-Secretary Clinton. State is also using ClassNet to distribute the FOIA material for review by both the intra-and-inter-agency. Material at the SECRET//NOFORN level was identified in the first set of 296 emails prior to their release. **Recommend IC FOIA officers review the emails to ensure ClassNet use is appropriate before transmitting to the State Bureaus for review.**

3. (U//~~FOUO~~) **Applying appropriate FOIA exemptions to protect classified information.** State Department FOIA personnel recommended five "B1" (Classified National Security Information) FOIA exemptions for proposed redactions in the first set of 296 emails to protect classified information. According to State FOIA personnel, during the State Department Legal Office's review, four of the B1 exemptions were removed and changed to "B5" FOIA exemptions (Privileged Communications). **Recommend State Department FOIA Office seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials.**

4. (U//~~FOUO~~) **It is unclear if the Department of Justice is reviewing the emails before FOIA release.** Former-Secretary Clinton's emails are the subject of numerous FOIA requests and multiple FOIA lawsuits. It may be prudent to integrate the Department of Justice into the FOIA process review to ensure the redactions can withstand potential legal challenges. **If not already being done, recommend the State Department FOIA Office incorporate the Department of Justice into the FOIA process to ensure the legal sufficiency review of the FOIA exemptions and redactions.**

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UNDER SECRETARY OF STATE

FOR MANAGEMENT

WASHINGTON

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JUN 25 2015

MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: M – Patrick F. Kennedy PFK

SUBJECT: Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-04)

I am in receipt of the subject Memorandum (dated June 19, 2015) and its accompanying Memorandum and Attachment from the Inspector General of the Intelligence Community (ICIG). Responses to the four recommendations are contained in the attached.

The Department of State's FOIA processes are consistent with of those of other agencies. State's FOIA personnel analyze responsive records for disclosure pursuant to the provisions of the FOIA and apply exemptions to the documents as appropriate. Department FOIA reviewers are trained in applying the exemptions, using guidance made available by the Department of Justice's Office of Information Policy. The reviewers consult with subject matter experts in Department components and with FOIA attorneys in the Department's Office of the Legal Adviser, as appropriate. In turn, the Department's attorneys consult regularly with attorneys at DOJ's Federal Programs Branch and attorneys at U.S. Attorney's Offices on legal issues that arise in the context of the FOIA and FOIA litigation. Consistent with the long-standing practice of third-agency review within the Executive branch and DOJ Policy on Referrals, Consultations, and Coordination, the Department consults with other agencies with respect to the review and disclosure of records that contain information that is of interest to another agency.

Taking the above in account, the Department finds the issues raised by the ICIG are either already addressed in current processes or are inconsistent with interagency practices. Further, the recommendations provided by the ICIG would add to the FOIA review process schedule and make it more difficult to meet the U.S. District Court order for rolling productions without meaningfully enhancing the review process.

Attachment:

As stated.

Recommendation #1

The process utilized by the State Department to identify other agency equities is one with parallels throughout the United States Government.

Prior to undertaking the current effort, a senior level meeting was held with representatives of a number of agencies (including the CIA and ODNI); the process to be utilized was outlined; and no objection was entered.

The retired senior Foreign Service Officers are utilized because of their years of both FOIA experience and substantive expertise in the various regional and functional issues that are reviewed.

If there are specific examples from the "Benghazi" 296 set that are of concern, the Department would welcome further information.

Recommendation #2

The State Department Classified network is authorized to handle up to SECRET material, including NOFORN, and thus ClassNet is the appropriate system for the storage and distribution of these FOIA materials.

Should the Department identify an e-mail that potentially contains material that could be classified at a higher level, that material would be pulled from the database and transmitted for review via an appropriate channel.

Recommendation #3

Final determinations of classification decisions are made by senior personnel within the Department's FOIA office, assisted by subject matter experts in relevant bureaus and in the Office of the Legal Adviser, after referral of other agency equities have been made to the appropriate agencies and their comments received. These individuals have the experience and expertise necessary to carry out this responsibility correctly.

Recommendation #4

Emails with Department of Justice equities (including those of its component entities) are forwarded to the relevant DOJ entities for review. Legal sufficiency review of the FOIA exemptions and redactions are conducted by attorneys from the Office of the Legal Adviser; they consult regularly with the Department of Justice's Federal Programs Branch regarding FOIA issues and litigation, including litigation involving the former Secretary's emails. This type of process is common throughout the interagency.

United States Department of State
Under Secretary of State
for Management
Washington, D.C. 20520

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July 14, 2015

MEMORANDUM FOR THE INSPECTOR GENERAL

FROM: Patrick F. Kennedy PFK

SUBJECT: Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-04)

The following information is provided in response to your request for supplemental information. First, the Bureau of Administration's Global Information Services (A/GIS) has been in contact with the Director of ODNI's Information Management Division and is making arrangements for the Intelligence Community (IC) to provide reviewers to assist the Department of State in identifying potential IC equities in its review of former Secretary Clinton's emails. A/GIS is expecting to host more than 10 IC reviewers and will be holding an orientation for the reviewers on July 15.

Second, as we explained, CLASSNET is a secure, classified intranet system. It may be used to process information up to and including SECRET. Should any of the documents in the FOIA review be upgraded to a higher classification than SECRET, they would be moved off CLASSNET. Resource constraints preclude conducting the entire FOIA review on a TOP SECRET system.

Regarding the third recommendation, four of the documents were identified for review by the Bureau of Near Eastern Affairs (NEA), which is the bureau with relevant subject matter expertise; two of the documents were substantively duplicates of each other. NEA consulted with the Office of the Legal Adviser regarding FOIA exemptions that were potentially available, including exemptions 1 (§ 1.4(d) of E.O. 13526) & 5. NEA decided, consistent with the Attorney General's 2009 FOIA guidance, to redact certain limited information under exemption 5 which reflected deliberations among policy officials. Two other documents were proposed for possible upgrade which involved equities of other agencies. In one document, the Department of Defense decided not to seek a

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classification upgrade. The other document, which contained an FBI equity, could have been redacted under either exemption 1, pursuant to § 1.4 (d) of E.O. 13526, or exemption 7, as law enforcement information.

Fourth, as noted previously, Department attorneys consult regularly with the Department of Justice's Federal Programs Branch on legal issues that arise in the context of the FOIA and FOIA litigation. This practice is longstanding and continues with respect to this review; L attorneys met with attorneys from Federal Programs on Monday of this week.

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ATTACHMENT C

OIG and ICIG Response to the Department

Recommendation 1: The State Department FOIA Office should request staff support from IC FOIA offices to assist in the identification of intelligence community equities.

Management Response: The Department's July 14, 2015, response (July 14 response) states that the Bureau of Administration's Global Information Services (A/GIS) has been in contact with the Director of ODNI's Information Management Division and is making arrangements for the Intelligence Community (IC) to provide reviewers to assist the Department of State in identifying potential IC equities in its review of former Secretary Clinton's emails. A/GIS is expecting to host more than 10 IC reviewers and will be holding an orientation for the reviewers on July 15.

OIG and ICIG Reply: OIG and ICIG consider this recommendation to be closed. A/GIS has made arrangements for the IC reviewers and these additional reviewers will assist the Department of State in identifying potential IC equities in its review of former Secretary Clinton's emails. The additional IC reviewers will assist in identifying and safeguarding IC information. OIG and ICIG will continue to assess the State FOIA review process and the implementation of this recommendation.

Recommendation 2: IC FOIA officers should review the emails to ensure ClassNet use is appropriate before transmitting to the State Bureaus for review.

Management Response: The Department's June 25, 2015, response (June 25 response) states that the State Department Classified network is authorized to handle up to SECRET material, including NOFORN, and thus ClassNet is the appropriate system for the storage and distribution of these FOIA materials. The July 14 response further states that resource constraints preclude conducting the entire review on a TOP SECRET system.

OIG and ICIG Reply: OIG and ICIG consider this recommendation to be unresolved. The ICIG understands the resource constraints presented by conducting the entire FOIA review on a TOP SECRET system. However, given that it is more likely than not that information classified higher than SECRET is present in this collection, it is prudent to seek an alternative to the ClassNet system.

Recommendation 3: The State Department FOIA Office should seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials.

Management Response: The June 25 response states that final determinations of classification decisions are made by senior personnel within the Department's FOIA office, assisted by subject matter experts in relevant bureaus and in the Office of the Legal Adviser, after referral of other agency equities have been made to the appropriate agencies and their comments received.

The July 14 response refers specifically to four emails that were identified for additional consultations regarding a proposed "B1" (Classified Information) FOIA exemption being changed to a "B5" (Privileged Communications) FOIA exemption during the State Department Legal Office's review. The July 14 response states the following:

> Four of the emails were identified for review by the Bureau of Near Eastern Affairs (NEA), which is the Bureau with relevant subject matter expertise; two of the documents were substantively duplicates of each other. NEA consulted with the Office of the Legal Adviser regarding FOIA exemptions that were potentially available, including B1 (§ 1.4 (d) of E.O. 13526) and B5. NEA decided, consistent with the Attorney General's 2009 FOIA guidance, to redact certain limited information under exemption B5 which reflected deliberations among policy officials. Two other documents were proposed for possible upgrade which involved equites of other agencies. In one document, the Department of Defense decided not to seek a classification upgrade. The other document, which contained an FBI equity, could have been redacted under exemption 1, pursuant to § 1.4 (d) of E.O. 13526, or exemption 7, as law enforcement information.

OIG and ICIG Reply: OIG and ICIG consider this recommendation to be unresolved. OIG and ICIG are assessing the information provided in the July 14 response and will further advise the Department after the assessment is completed. Consulting with State Department experts may be sufficient to protect classified State Department equities. However, the information may also be classified due to intelligence equities. OIG and ICIG reiterate the need to seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials.

Recommendation 4: If not already being done, the State Department FOIA Office should incorporate the Department of Justice into the FOIA process to ensure the legal sufficiency review of the FOIA exemptions and redactions.

Management Response: The June 25 response stated that emails with the Department of Justice (DOJ) equities (including those of its component equities) are forwarded to the relevant DOJ entities for review. Legal sufficiency review of the FOIA exemptions and redactions are conducted by attorneys from the Office of the Legal Adviser; they consult regularly with the DOJ's Federal Programs Branch regarding FOIA issues and litigation, including litigation following the former Secretary's emails. This type of process is common throughout the interagency.

OIG and ICIG Reply: OIG and ICIG consider this recommendation to be closed.

ATTACHMENT D

OIG and ICIG Memorandum to the Department, Dated June 29, 2015

OIG Office of Inspector General
U.S. Department of State • Broadcasting Board of Governors

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June 29, 2015

MEMORANDUM FOR UNDER SECRETARY KENNEDY

FROM: Steve A. Linick, Inspector General, Department of State
I. Charles McCullough, III, Inspector General, Intelligence Community

SUBJECT: Potential Issues Identified by the Office of the Inspector General of the Intelligence Community Concerning the Department of State's Process for the Review of Former Secretary Clinton's Emails under the Freedom of Information Act (ESP-15-05)

We understand that, in compliance with a federal court order connected to pending Freedom of Information Act (FOIA) litigation, the Department plans to publish tomorrow a portion of the 55,000 pages of emails produced by former Secretary Clinton. We are therefore providing this Memorandum as follow up to our June 19, 2015, Memorandum to you, to provide additional information supporting our concerns about the current process underway to review the 55,000 pages of emails prior to publication.

On June 26 and June 27, 2015, Department staff responsible for FOIA issues further reviewed a portion of the 55,000 pages that have been or are to be reviewed. They report discovering hundreds of potentially classified emails within the collection. In addition, there is concern that possible classified material will be posted in tomorrow's release. Staff members from the Office of Inspector General for the Intelligence Community (IC IG) are now taking steps to verify the classification of some of these emails.

Under the circumstances, we continue to urge the Department to adopt the recommendations made by the IC IG in our June 19 Memorandum in order to enhance the current review system and to further minimize risk. The Department should ensure that no classified documents are publically released.

cc: D-MR - Heather A. Higginbottom