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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

July 29, 2015

Mr. David E. Kendall
Williams & Connolly LLP
725 Twelfth Street NW
Washington, DC 20005

Dear Mr. Kendall:

The Inspector General of the Intelligence Community (IC IG) recently notified Congress that you possess a thumb drive containing 30,000 emails from your client, former Secretary of State Hillary Clinton, which may contain classified information sent or received by Secretary Clinton.¹ I write to inquire what protections you have implemented to access, store, and safeguard the classified material in your possession.

On March 12, 2015, I joined with Chairmen Bob Corker and Richard Burr in asking the Inspector General of the State Department to examine whether State Department employees sent or received classified information in an insecure manner.² We asked that the State Department IG coordinate with the IC IG in this review.³ On March 18, 2015, I wrote separately to the State Department IG to inquire, among other things, whether Secretary Clinton's emails included any classified information.⁴ On July 23, 2015, the IC IG notified Congress that State Department Freedom of Information Act (FOIA) officials informed him "that there are potentially hundreds of classified emails within the approximately 30,000 provided by former Secretary Clinton."⁵ The IC IG stated:

We note that none of the emails we reviewed had classification or dissemination markings, but some included IC-derived classified information and should have been handled as classified, appropriately marked, and transmitted via a secure network. **Further, my office's limited sampling of 40 of the emails revealed four contained classified IC information which should have been marked and handled at the SECRET level.**⁶

¹ Memorandum for Sen. Richard Burr et al. from I. Charles McCullough, III, Update to IC IG support to State Department IG (July 23, 2015).

² See Letter from Senator Bob Corker et al., to U.S. Dep't of State, Office of Inspector Gen. (Mar. 12, 2015).

³ *Id.*

⁴ Letter from Senator Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs, to Steve A. Linick, U.S. Dep't of State Office of Inspector Gen. (Mar. 18, 2015).

⁵ Memorandum, *supra* note 1, at 2.

⁶ *Id.* (emphasis added).

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The memorandum further stated that “the 30,000 emails in question are purported to have been copied to a thumb drive in the possession of former Secretary Clinton’s personal counsel, Williams and Connelly [*sic*] attorney David Kendall.”⁷

On July 24, 2015—after suggestions that the information in Secretary Clinton’s emails had been classified retroactively⁸—the IC IG and the State Department IG issued a joint statement. They wrote:

The IC IG found four emails containing classified IC-derived information in a limited sample of 40 emails of the 30,000 emails provided by former Secretary Clinton. The four emails, which have not been released through the State FOIA process, did not contain classification markings and/or dissemination controls. **These emails were not retroactively classified by the State Department; rather these emails contained classified information when they were generated and, according to IC classification officials, that information remains classified today.** This classified information should never have been transmitted via an unclassified personal system.⁹

The IC IG and State Department IG concluded that “classified information may exist on at least one private server and thumb drive that are not in the government’s possession.”¹⁰

As you know, Directive No. 1 of the National Archives’ Information Security Oversight Office (ISOO) requires holders of classified information to “protect[] it from persons without authorized access to that information, to include securing it in approved equipment or facilities”¹¹ The ISOO Directive mandates that “[c]lassified information shall be stored only under conditions designed to deter and detect unauthorized access to the information,” and prescribes storage requirements according to the classification level.¹² The Directive also prescribes requirements for the transmission of classified information and requires the implementation of information controls to “assure that access to classified information is provided to authorized persons.”¹³ Further, the State Department’s *Foreign Affairs Manual* requires classified information to be stored in an “approved locked container” under particular conditions.¹⁴

Based on the IC IG’s memorandum, it is unclear what actions, if any, you have taken to safeguard the classified information contained on the thumb drive in your possession. The lax

⁷ *Id.*

⁸ See Josh Gerstein & Hanna Trudo, *Hillary Clinton on email scandal: Everybody calm down*, Politico, June 24, 2015 (statement of Rep. Elijah E. Cummings).

⁹ I. Charles McCullough, III, & Steve Linick, Statement from the Inspectors General of the Intelligence Community and the Department of State Regarding the Review of Former Secretary Clinton’s Emails (July 24, 2015) (emphasis added).

¹⁰ *Id.*

¹¹ 32 C.F.R. § 2001.41.

¹² *Id.* § 2001.43.

¹³ *Id.* § 2001.45, 2001.46.

¹⁴ Storing and Safeguarding Classified Material, 12 F.A.M. 530.

storage and safeguarding of this information could have serious consequences to national security. Accordingly, I ask that you provide the following information:

1. Please explain how you have secured the thumb drive in your possession that apparently contains Secretary Clinton's emails, including emails with classified information ("the thumb drive").
2. Please identify the manufacturer and model of the thumb drive.
3. Please identify all individuals who have had or currently have access to the thumb drive.
4. Please identify the computer system(s) you and/or your colleagues utilize or have utilized to access the data on the thumb drive.
5. Please provide a list of every individual who has accessed or had possession of the thumb drive since it came to be in your possession.
6. Please explain the controls you have established for storing, transporting, and accessing the thumb drive and the basis for those controls in Federal policies and procedures regarding storage of and access to classified information.
7. Please identify any partners or employees of Williams & Connolly, including yourself, who possess personal security clearances for the possession of and access to classified information issued by the Federal Government; any partners or employees of Williams & Connolly with formal authorizations to courier classified information; and any facility clearances issued to Williams & Connolly or to which individuals at Williams & Connolly have access for storage purposes.
8. Please explain how you have secured the server used by Secretary Clinton to send and receive emails during her time as Secretary of State, including emails that may contain classified information.

In addition, I ask that you take all appropriate steps on behalf of Secretary Clinton to preserve all devices and data on those devices—including the thumb drive in your possession and the private server used by Secretary Clinton—that may contain classified information. I ask that you provide responses to the requests above and a certification that you have preserved this material as soon as possible but no later than 5:00 p.m. on August 12, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."¹⁵ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of the Government with particular reference to—the effectiveness of

¹⁵ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

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present national security methods, staffing, and process . . . ”¹⁶ For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact David Brewer or Liam McKenna of the Committee staff at (202) 224-4751. Thank you for your cooperation.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Enclosure

¹⁶ S. Res. 73 § 12, 114th Cong. (2015).