

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 29, 2016

The Honorable John F. Kerry
Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

The Honorable James R. Clapper
Director of National Intelligence
Office of the Director of National Intelligence
Washington, D.C. 20511

Dear Secretary Kerry and Director Clapper:

I am writing today to ask for your help in understanding the classification determinations that have been made with respect to former Secretary of State Hillary Clinton's emails.

Rather than clarifying this situation, the information provided to Congress by the FBI raises even more questions than it answers. The documents show a system that is severely disjointed, often incomprehensible, and in some cases internally contradictory. It appears that our nation's classification system is fundamentally broken and in desperate need of reform.

On July 11, 2016, I wrote a letter to FBI Director James Comey after he testified before our Committee about his decision not to pursue prosecution. I am attaching that letter for your review.

In my letter to Director Comey, I cited examples in which your agencies have disagreed about the classification levels of these documents, and I asked basic questions about how this process works. Specifically, I asked whether your agencies were given an opportunity to review all of the emails now considered classified when they were sent and whether you agreed with the classification decisions for all of those documents.

Unfortunately, the FBI has not been able to provide answers to these questions. That may be, in part, because the FBI is not the entity making the classification determinations. That task rests with you. For that reason, I am now requesting this information directly from you as I continue to work to obtain information from the FBI.

In addition to answering the questions I posed in my letter to Director Comey, I would like to know whether your agencies or the elements within them participated in the classification review of all of the emails now considered classified at the time the emails were sent. If your agency or its elements did not review each of these emails, I would like to know why not. I would also like to know whether your agency or its elements agreed with the classification decisions on each of these emails.

After reviewing the documents provided to Congress by the FBI, I have several additional questions.

Director Comey testified before the Oversight Committee on July 7, 2016, that executive branch agencies determined that these emails included information that was classified at the time the emails were sent. However, a review of these documents shows that multiple emails were explicitly marked unclassified. Several emails produced to Congress by the FBI were originally marked to state that they contain “Sensitive But Unclassified” or “SBU” information.

I would like to know whether, and how, your agencies determined that these emails were classified when they were sent, as well as whether you considered the source of information on which the author relied.

A review of these documents also shows that these emails were authored and sent to dozens and dozens of officials—including on large distribution lists that included distinguished career employees with decades of experience—but there is no evidence within these documents that anyone who sent or received these emails raised any concern that the information within them was classified.

These documents also include references to a key email exchange between former Secretary of State Colin Powell and Secretary Clinton in which Secretary Powell advised Secretary Clinton on using personal email. It appears that this exchange occurred on January 23, 2009, two days after Secretary Clinton was sworn in as Secretary of State. I request a copy of this full email exchange.

Finally, many Members of Congress and others have expressed concern that these and other documents are simply overclassified. For example:

- **Oversight Committee Chairman Jason Chaffetz:** On August 22, 2016, after reviewing the documents provided to Congress, Chairman Chaffetz stated: “I think the documents are overly classified.” He added: “A lot of this that they claim is classified, is just flat out embarrassing. It’s not—there’s nothing classified about it.”¹
- **Benghazi Select Committee Chairman Trey Gowdy:** On July 8, 2015, Chairman Gowdy sent a letter to Secretary Kerry “to express concern with respect to the apparently arbitrary classification or over-classification of documents” relating to the Accountability Review Board for Benghazi, which he stated “lead to the conclusion that a classification label was merely ‘slapped on.’”²

¹ *Morning Joe*, MSNBC (Aug. 22, 2016) (online at www.youtube.com/watch?v=RlvQ0ij5CSw).

² Letter from Chairman Trey Gowdy, House Select Committee on Benghazi, to Secretary John F. Kerry, Department of State (July 8, 2015) (online at www.scribd.com/doc/275503494/Trey-Gowdy-s-July-8-letter-to-John-Kerry).

The Honorable John F. Kerry
The Honorable James R. Clapper
Page 3

- **Former Secretary of State Colin Powell:** After being informed that some of his emails had been determined to be classified when they were sent, Secretary Powell stated: "The State Department cannot now say they were classified then because they weren't. ... If the Department wishes to say a dozen years later they should have been classified that is an opinion of the Department that I do not share. ... I have reviewed the messages and I do not see what makes them classified."³ He added: "a normal, air-breathing mammal would look at them and say, 'What's the issue?'"⁴

I understand that there has been significant attention on Secretary Clinton because she is running for president, but if agencies in fact believe these emails were classified when they were sent, this reflects a much larger challenge across multiple federal agencies with respect to determining when information is in fact classified.

I hope we can work in a productive way going forward to help address this challenge, and I thank you for your assistance with this matter.

Sincerely,



Elijah E. Cummings
Ranking Member

cc. The Honorable Jason Chaffetz, Chairman
The Honorable James Comey, Director, Federal Bureau of Investigation

³ *State Department: Powell, Rice Staffers Received Classified Info Via Personal Email*, CNN (Feb. 5, 2016) (online at www.cnn.com/2016/02/04/politics/hillary-clinton-email-classified-colin-powell-condoleezza-rice/).

⁴ *Condoleezza Rice Aides, Colin Powell Also Got Classified Info on Personal Emails*, NBC News (Feb. 4, 2016) (online at www.nbcnews.com/news/us-news/rice-aides-powell-also-got-classified-info-personal-emails-n511181).