



U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20535-0001

Date: 23 October 2015

To: Gregory B. Starr
Assistant Secretary
Bureau of Diplomatic Security

From: Charles H. Kable IV
Section Chief
Counterespionage Section

Subject: Classification Review and Determination Request

(U//FOUO) In July 2015, the FBI received a Section 811 referral from the Inspector General for the Intelligence Community (ICIG) regarding the possible compromise of classified national security information.

(U//FOUO) The potential compromise was identified when, as part of a Freedom of Information Act (FOIA) request, the U.S. Department of State (DoS) and the ICIG reviewed electronic mail (email) communications from private email accounts previously used by a former Secretary of State during her tenure at DoS. An initial review of this material identified emails containing national security information later determined by the US Intelligence Community (USIC) to be classified up to the Top Secret/Sensitive Compartmented Information level.

(U//FOUO) The FBI respectfully requests the DoS conduct an official classification review and determination of the related documents contained on the accompanying DVD.

(U//FOUO) The FBI understands that DoS may have previously received similar, separate requests from other entities for an official classification review and determination for some or all of the documents contained on the enclosed DVD. In order to ensure consistency, the FBI requests DoS to de-conflict its response to this FBI request with any previous classification determination responses

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

related to these documents, and to provide the FBI the same classification determinations. The FBI requests DoS to provide as soon as possible any previously rendered official classification determinations of documents related to this matter, to include any classification determinations of documents related to the @clintonemail.com domain that are not contained on the attached DVD. The FBI requests DoS to provide classification determination responses to the FBI on a rolling basis as they become available.

(U//FOUO) The enclosed DVDs each contain a *ReadMe.docx* file, which provides an explanation of the files contained on the DVD. The DVD also contains a Microsoft Excel spreadsheet titled *Classification Review Response Tracker* to assist your agency with tracking and responding to this classification review and determination request. The documents for review are listed in the *FileList.xlsx* spreadsheet and are contained in the *Items* folder. The *Items* folder is further explained in the aforementioned *ReadMe.docx* file. In the event DoS is aware of any equities belonging to other US Government agencies contained in documents provided as part of this request, the FBI requests DoS to identify those other US Government agencies in the "Notes" section of the enclosed spreadsheet.

(U//FOUO) The FBI may contact you in the future to ask you to prioritize the review of certain items provided as part of this request.

(U//FOUO) You are requested not to disclose the existence of this inquiry, other than as necessary for compliance; disclosure may jeopardize the confidential nature of the FBI's investigation.

(U//FOUO) Please direct all inquiries regarding this request to Special Agent [redacted] at [redacted]

Sincerely,



Charles H. Kable IV
Section Chief
Counterespionage Section


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U.S. Department of Justice
Federal Bureau of Investigation
Washington, D.C. 20535-0001

Date: 20 January 2016

To: Gregory B. Starr
Assistant Secretary
Bureau of Diplomatic Security

From: Peter Strzok 
Section Chief
Counterespionage Section

Subject: Supplemental Classification Review and Determination Request

(U//FOUO) In July 2015, the FBI received a Section 811 referral from the Inspector General for the Intelligence Community (ICIG) regarding the possible compromise of classified national security information.

(U//FOUO) The potential compromise was identified when, as part of a Freedom of Information Act (FOIA) request, the U.S. Department of State (DoS) and the ICIG reviewed electronic mail (email) communications from private email accounts previously used by a former Secretary of State during her tenure at DoS. An initial review of this material identified emails containing national security information later determined by the US Intelligence Community (USIC) to be classified up to the Top Secret/Sensitive Compartmented Information level.

(U//FOUO) The FBI respectfully requests DoS conduct an official classification review and determination of the related documents contained on the accompanying DVD. This request is in addition to a previous Classification Review and Request submitted to your agency in 2015. While this request is separate from the 2015 request, it should be responded to in similar manner.

(U//FOUO) The FBI understands you may also be reviewing materials as part of ongoing FOIA lawsuits involving some of these

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documents. This matter should remain separate from the FOIA matter(s) and information from this request should not be shared or co-mingled with the FOIA matter(s) to ensure the FBI's investigation is not compromised or adversely affected.

(U//FOUO) The FBI also understands that DoS may have previously received similar, separate requests from other entities for an official classification review and determination for some or all of the documents contained on the enclosed DVD. In order to ensure consistency, the FBI requests DoS de-conflict its response to this FBI request with any previous classification determination responses related to these documents, and to provide the FBI the same classification determinations. The FBI requests DoS to provide as soon as possible any previously rendered official classification determinations of documents related to this matter, to include any classification determinations of documents related to the @clintonemail.com domain that are not contained on the attached DVD. The FBI requests DoS to provide classification determination responses to the FBI on a rolling basis as they become available.

(U//FOUO) Similar to the FBI's previous request, the enclosed DVDs contains a *ReadMe.docx* file, which provides an explanation of the files contained on the DVD. The DVDs also contain a Microsoft Excel spreadsheet titled *Classification Review Response Tracker* to assist your agency with tracking and responding to this classification review and determination request. The documents for review are listed in the *FileList.xlsx* spreadsheet and are contained in the *Items* folder. The *Items* folder is further explained in the aforementioned *ReadMe.docx* file. In the event DoS is aware of any equities belonging to other US Government agencies contained in documents provided as part of this request, the FBI requests DoS to identify those other US Government agencies in the "Notes" section of the enclosed spreadsheet.

(U//FOUO) The FBI may contact you in the future to ask you to prioritize the review of certain items provided as part of this request.

(U//FOUO) You are requested not to disclose the existence of this inquiry or the contents of the provided media, other than as necessary for compliance; disclosure may jeopardize the confidential nature of the FBI's investigation.

(U//FOUO) Please direct all inquiries regarding this request to Special Agent [REDACTED] at [REDACTED]

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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Sincerely,

A handwritten signature in dark ink, appearing to read 'Peter Strzok', written over the word 'Sincerely,'.

Peter Strzok
Section Chief
Counterespionage Section

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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
JASON LEOPOLD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 15-cv-02117 RDM
)	
U.S. DEPARTMENT OF JUSTICE)	
)	
Defendant.)	
_____)	

NOTICE OF FILING OF THIRD DECLARATION OF DAVID M. HARDY

EXHIBIT 1

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requests for access to Federal Bureau of Investigation ("FBI") records and information pursuant to the FOIA, 5 U.S.C. § 552; Privacy Act of 1974; Executive Order ("E.O.") 13,526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by E.O. 13,526, 75 Fed. Reg. 707 (2010), and the preparation of declarations in support of FOIA Exemption 1 claims asserted under the FOIA, 5 U.S.C. § 552(b)(1). I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13,526, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) (U) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to plaintiff's request for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552. Specifically, I am aware of the FBI's handling of plaintiff's FOIA request for all records retrieved from any electronic equipment obtained from former Secretary of State Hillary Clinton for the investigation that have not already been made public, as well as correspondence between specific individuals or organizations concerning regarding any electronic equipment obtained including authorizations for FBI personnel to disclose information to the media or any other outside entity/person regarding the FBI's possession of any electronic equipment obtained from Secretary Clinton or information retrieved therefrom.

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(4) (U) The FBI submits this declaration in support of defendant's motion for summary judgment. It incorporates by reference my first public declaration in this case as well as the first *in camera, ex parte* classified declaration submitted by the FBI. *See* ECF No. 9-1, Declaration of David M. Hardy ("1st Hardy Decl.") and ECF No. 8, Notice of Lodging of Classified, *In Camera, Ex Parte* Declaration. It also incorporates by reference my second public declaration that the FBI is submitting in conjunction with its reply in support of summary judgment. This third declaration addresses allegations raised by plaintiff in his opposition to the FBI's motion for summary judgment regarding the FBI's searches. *See* ECF No. 14, Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment. Specifically, it provides additional information about the FBI's search for records responsive to items #2, #3, and #5 of plaintiff's FOIA request. This information is sensitive law enforcement information that cannot be disclosed on the public record without adversely affecting the FBI's pending investigation.

(5) (U) Items #2 and #3 of plaintiff's FOIA request sought records relating to authorizations to disclose specific information related to the investigation (*i.e.*, information about the "seizure, confiscation, or taking possession of the Clinton Server" and "whether and what information has been obtained from the Clinton Server") to the media or other persons or entities. Item #5 sought correspondence between the FBI and Secretary Clinton or her representatives regarding any electronic equipment obtained from Secretary Clinton.

(6) (U) In order to locate any records responsive to these items, the FBI consulted employees with extensive knowledge of and expertise about the investigation; activities undertaken in furtherance of and in relation to the investigation; and the contents of the

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investigative file. Specifically, the FBI consulted a Supervisory Special Agent (“SSA”) assigned to lead and supervise the FBI’s investigation. This SSA has been involved in or overseen all aspects of the investigation, and is a subject matter expert regarding the investigation. He can attest to facts related to the investigation and its conduct. The FBI also consulted attorneys from the FBI’s Office of the General Counsel (“OGC”) who are providing legal support and advice to the investigative team and FBI executives.

(7) (U//~~LES~~) With regard to items #2 and #3, the SSA and OGC attorneys advised that no one in the FBI has been authorized to make such disclosures, except for Director Comey. Indeed, only a limited number of FBI personnel have been read into and have access to information about the investigation and to the investigative file.

(8) (U//~~LES~~) Moreover, were any such authorizations made, they would have been documented, and a record of them would have been retained, in the investigative file. No such authorizations exist in the investigative file prior to the search cut-off date of this FOIA request (December 7, 2015).

(9) (U//~~LES~~) Finally, the FBI has determined that there are no other record systems where records responsive to items #2 and #3 of plaintiff’s request would be retained. The offices mentioned by plaintiff – the Office of Congressional Affairs, the Office of Public Affairs, and the Washington Field Office’s public affairs office – can serialize records into files in the FBI’s Central Records System (“CRS”), just as investigative personnel can do. Plaintiff has not established any basis to believe that records responsive to items #2 and #3 would exist outside the investigative file (which is part of the CRS), and the FBI has not itself identified any leads suggesting that responsive records would reside in any other record system(s). This is consistent

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with the fact that no one in the FBI has been authorized to make any disclosures about the investigation.

(10) (U//~~LES~~) In sum regarding the FBI's search for records responsive to items #2 and #3, FBI employees with extensive knowledge of the investigation have advised that no authorization to disclose the seizure/contents of any server, thumb drive, or other electronic equipment obtained from Secretary Clinton, or information obtained therefrom, have been made in this case; no records of any authorization exist in the investigative file; and there are no concrete leads suggesting records responsive to items #2 and #3 may reside in other record systems.

(11) (U//~~LES~~) With regard to item #5, the SSA and OGC attorneys advised that the FBI has not corresponded directly with Secretary Clinton or her representatives during this investigation. (The request only sought correspondence between *the FBI* and Secretary Clinton/her representatives.) Rather, as of the search cut-off date in this case (December 7, 2015), Secretary Clinton's representatives, on her behalf, had been corresponding directly with another component of the Department of Justice and its personnel. The SSA pulled all correspondence involving Secretary Clinton/her representatives from the investigative file, and he and the OGC attorneys confirmed that none of the correspondence was sent to or from the FBI. As of the search cut-off date, the only direct interactions between the FBI and Secretary Clinton's representatives were in relation to making various logistical arrangements, which were handled telephonically rather than by correspondence. (The FBI has not corresponded directly with Secretary Clinton at all.) The FBI has concluded that there are no other record systems

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where responsive records would be retained, and plaintiff has not identified any leads to records responsive to item #5 in other record systems.

(12) (U//LES) In sum, FBI employees with extensive knowledge of the investigation have advised that as of December 7, 2015, the FBI had not corresponded directly with Secretary Clinton or her representatives, which was confirmed by a review of correspondence from the investigative file.

(13) (U) Accordingly, the FBI conducted an adequate search of the only record system likely to include responsive records and properly concluded that it has no records responsive to items #2, #3, and #5 of plaintiff's request.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of June, 2016.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Winchester, Virginia

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