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United States Senate

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

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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January 20, 2018

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Ave, NW
Washington, D.C. 20535

Dear Director Wray:

The Committee on Homeland Security and Governmental Affairs is continuing its oversight of the Federal Bureau of Investigation (FBI) and the FBI's investigation of classified information on former Secretary of State Hillary Clinton's private email server. I write to request information about the loss of FBI records connected to this investigation, and how the FBI oversees its employees' use of private email accounts for official business.

On January 19, 2018, the Department of Justice produced 384 pages of text messages exchanged between FBI employees Lisa Page and Peter Strzok.¹ According to a cover letter accompanying the documents, the FBI did not preserve text messages between Ms. Page and Mr. Strzok between approximately December 14, 2016 and May 17, 2017.² The cover letter explained:

The Department wants to bring to your attention that the FBI's technical system for retaining text messages sent and received on FBI mobile devices failed to preserve text messages for Mr. Strzok and Ms. Page from December 14, 2016 to approximately to May 17, 2017. The FBI has informed [the Department of Justice] that many FBI-provided Samsung 5 mobile devices did not capture or store text messages due to misconfiguration issues related to rollouts, provisioning, and software upgrades that conflicted with the FBI's collection capabilities. The result was that data that should have been automatically collected and retained for long-term storage and retrieval was not collected.³

The loss of records from this period is concerning because it is apparent from other records that Mr. Strzok and Ms. Page communicated frequently about the investigation. In February 2016, Ms. Page texted Mr. Strzok that then-candidate Trump "simply can not [*sic*] be

¹ Letter from Stephen Boyd, Assistant Attorney Gen. for Legislative Affairs, Dep't of Justice, to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Security and Gov't Affairs, Jan. 19, 2018. The letter also included 384 pages of text messages between Mr. Strzok and Ms. Page [herein after "Jan. 19 production."].

² *Id.*

³ *Id.*

president.”⁴ On May 4, 2016—after then-Director Comey began drafting his July 5 statement clearing Secretary Clinton—Ms. Page and Mr. Strzok communicated about “pressure” building to finish the FBI’s investigation following candidate Trump’s likely nomination:

Ms. Page: And holy shit Cruz just dropped out of the race. It’s going to be a Clinton Trump race. Unbelievable.

Mr. Strzok: What?!?!??

Ms. Page: You heard it right my friend.

Mr. Strzok: I saw trump [*sic*] won, figured it would be a bit

Mr. Strzok: Now the pressure really starts to finish MYE....

Ms. Page: It sure does. We need to talk about follow up call tomorrow. We still never have.⁵

The reference to the “MYE” by Mr. Strzok refers to the “midyear exam,” the FBI’s case name for the Clinton investigation.⁶

In addition, Mr. Strzok and Ms. Page discussed the drafting of Director Comey’s July 5 statement exonerating Secretary Clinton. On June 30, 2016, FBI personnel circulated a draft of Director Comey’s statement that noted that Secretary Clinton had emailed with President Obama from the private server while abroad in the “territory of sophisticated adversaries.”⁷ The passage read:

We also assess that Secretary Clinton’s use of a personal email domain was both known by a large number of people and readily apparent. She also used her personal email extensively while outside the United States, including from the territory of sophisticated adversaries. **That use included an email exchange with the President while Secretary Clinton was on the territory of such an adversary.** Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton’s personal email account.⁸

The same afternoon, after FBI officials edited the draft to replace “the President” with “another senior government official,”⁹ Mr. Strzok sent a text message to Ms. Page notifying her of the change. The exchange read:

⁴ Jan. 19 production at 58.

⁵ Jan. 19 production at 114.

⁶ Olivia Beavers, *Comey began drafting Clinton statement months in advance*, The Hill, Oct. 16, 2017.

⁷ Documents FBI produced to the Committee on Nov. 17, 2017 marked SJC 000028-000271 [herein after “FBI documents”].

⁸ FBI documents at SJC 000064

⁹ FBI documents at SJC 000078

Mr. Strzok: K. Rybicki just sent another version.

Ms. Page: Bill just popped his head in, hopefully to talk to him.

Mr. Strzok: Hope so. Just left Bill. Talked about the speech, the [redacted] stuff relating to the case, and what I told you about earlier.

Mr. Strzok: He changed President to “another senior government official.”¹⁰

Director Comey’s statement as ultimately delivered on July 5 omitted a reference to either President Obama or “another senior government official.”¹¹

The conversations between Ms. Page and Mr. Strzok also appear to suggest that then-Attorney General Lynch was aware that Director Comey would not recommend criminal charges in the Clinton investigation prior to Attorney General Lynch’s announcement that she would accept whatever recommendation the FBI made.¹² On July 1, 2016—the same day as Attorney General Lynch’s announcement, but before the FBI had interviewed Secretary Clinton and before Director Comey had announced his recommendation—Ms. Page and Mr. Strzok exchanged the following messages:

Mr. Strzok: Holy cow....nyt breaking Apuzzo, Lync [*sic*] will accept whatever rec D¹³ and career prosecutors make. No political appointee input.

Mr. Strzok: Lynch. Timing not great, but whatever. Wonder if that’s why the no coordination language added.

Ms. Page: No way. This is a purposeful leak following the airplane snafu.

Mr. Strzok: Timing looks like hell. Will appear to be choreographed. All major news networks literally leading with “AG to accept FBI D’s recommendation.”

¹⁰ Jan. 19 production at 166.

¹¹ *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton’s Use of a Personal E-Mail System*, July 5, 2016, available at <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system> Director Comey’s July 5 statement read: “We do assess that hostile actors gained access to the private commercial e-mail accounts of people with whom Secretary Clinton was in regular contact from her personal account. We also assess that Secretary Clinton’s use of a personal e-mail domain was both known by a large number of people and readily apparent. She also used her personal e-mail extensively while outside the United States, including sending and receiving work-related e-mails in the territory of sophisticated adversaries. Given that combination of factors, we assess it is possible that hostile actors gained access to Secretary Clinton’s personal e-mail account.”

¹² Mark Landler, Matt Apuzzo, and Amy Chozick, *Loretta Lynch to Accept F.B.I. Recommendations in Clinton Email Inquiry*, NY TIMES, July 1, 2016, <https://www.nytimes.com/2016/07/02/us/politics/loretta-lynch-hillary-clinton-email-server.html?mtref=www.google.com&gwh=63C838733CD90850AA3927C0C6A1982D&gwt=pay>.

¹³ “D” refers to former FBI Director James Comey

- Ms. Page:** Yeah, that is awful timing. Nothing we can do about it.
- Mr. Strzok:** What I meant was, did DOJ tell us yesterday they were doing this, so D added that language.
- Mr. Strzok:** Yep. I told Bill the same thing. Delaying just makes it worse.
- Ms. Page:** And yes. I think we had some warning of it. I know they sent some statement to rybicki, bc he called andy.
- Ms. Page:** **And yeah, it's a real profile in couragw [sic], since she knows no charges will be brought.**¹⁴

In addition, the text messages appear to suggest that Ms. Page and Mr. Strzok used non-FBI-issued devices to discuss FBI business. For example, in April 2016, Ms. Page texted Mr. Strzok, "so look, you say we text on that phone when we talk about hillary [sic.] because it can't be traced, you were just venting [because] you feel bad that you're gone so much but it can't be helped right now."¹⁵ Mr. Strzok replied, "Right. But did you say anything other than work? I did, [redacted]."¹⁶ In addition, Ms. Page and Mr. Strzok reference several times about emailing each other on Gmail.¹⁷

Under federal law, the head of each federal agency is required to preserve all records documenting the decision-making process and essential transactions of the agency.¹⁸ In light of the Department of Justice's notification that FBI records from the Clinton investigation are missing, and as the Senate committee with jurisdiction over federal records, I ask that you please produce the following information and material:

1. Please explain the scope and scale of all records lost, destroyed, or otherwise alienated during the midyear examination investigation.
2. Does the FBI have any records of communications between Ms. Page and Mr. Strzok between December 14, 2016 and May 17, 2017? If so, please provide those communications.
3. Has the FBI conducted searches of Mr. Strzok and Ms. Page's non-FBI-issued communication devices or accounts to determine whether federal records exist on those

¹⁴ Jan. 19 production at 167.

¹⁵ Jan. 19 production at 94.

¹⁶ *Id.*

¹⁷ *See, e.g.* November 10, 2016 text from Ms. Page: "Hey without thinking I replied to the email you sent me on Gmail. But it went to your Verizon. So please clear. Let me know if you want me to send it again somewhere else." Jan. 19 production at 321; *see also* October 4, 2015 text from Mr. Strzok: "It's going to be ok at work. And haven't emailed you here, although I just did on gmail." Jan. 19 production at 18.

¹⁸ 44 U.S.C. § 3101.

nonofficial accounts? Please explain how the FBI is complying with federal records requirements with respect to these devices.

4. Has the FBI produced text messages to the Department of Justice Office of Inspector General (DOJ OIG) of any other FBI employees in furtherance of the DOJ OIG's review of the Clinton email investigation? If so, please identify which FBI employees' communications were produced.
5. Has the FBI produced Microsoft Lync conversations between Ms. Page and Mr. Strzok to the DOJ OIG? Please explain.

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,"¹⁹ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices"²⁰

Thank you for your attention to this matter. If you have any questions about this request, please contact Kyle Brosnan or Brian Downey of the Committee staff at (202) 224-4751.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

Enclosure

¹⁹ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

²⁰ S. Res. 62 § 12, 115th Cong. (2017).