

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	Civil Action No. 13-CV-1363 (EGS)
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
STATE,)	
)	
Defendant.)	
_____)	

DEFENDANT’S STATUS REPORT

Pursuant to the Court’s August 20, 2015 Minute Order, defendant U.S. State Department (“State”) submits this status report. In its minute order, the Court ordered State to “request that the Federal Bureau of Investigation (FBI) inform it about any information recovered from [former Secretary of State Hillary] Clinton’s server and the related thumb drive that is: (a) potentially relevant to the FOIA request at issue in this case; and (b) not already in the State Department’s possession.” The Court also ordered State to file a status report by September 21 on the following issues: “(1) the process agreed upon between the FBI and the State Department for the sharing of information relevant to this lawsuit; (2) the status of the Inspector General of the State Department’s report regarding Mrs. Clinton’s use of a private server; and (3) a timetable for the completion of any ongoing searches related to this lawsuit.” Aug. 20, 2015 Minute Order. The Court subsequently ordered State to include in its September 21 status report information about the volume of documents it has received from Cheryl Mills and Huma Abedin. Sept. 11, 2015 Minute Order.

I. Request to the FBI and Communications Between State and the FBI

On September 2, 2015, State sent a letter to the FBI, requesting that the FBI inform it about any information recovered from former Secretary Clinton's server and the related thumb drive that is potentially relevant to the FOIA request at issue in this case and is not already in State's possession. Sept. 2, 2015 letter, attached hereto as Exh. A. The letter summarized the scope of the FOIA request at issue in this case, and asked the FBI to respond in writing to this letter in advance of the due date of this status report. *Id.*

State sent a second letter to the FBI regarding these issues on September 14, 2015. In that letter, State first requested from the FBI "an electronic copy of the approximately 55,000 pages identified as potential federal records and produced on behalf of former Secretary Clinton to the Department of State on December 5, 2014." Sept. 14, 2015 letter, attached hereto as Exh. B. Second, State requested that, "to the extent the FBI recovers any potential federal records that may have existed on the server at various points in time in the past, [the FBI] apprise the [State] Department insofar as such records correspond with Secretary Clinton's tenure at the Department of State." *Id.* Third, State requested that, "[b]ecause of [State's] commitment to preserving its federal records, . . . any recoverable media and content be preserved by the FBI so that we can determine how best to proceed." *Id.*

On September 21, 2015, State received a response from the FBI to its September 2 letter. A copy of the FBI's response is attached hereto as Exhibit C. The substance of that response is as follows: "At this time, consistent with long-standing Department of Justice and FBI policy, we can neither confirm nor deny the existence of any ongoing investigation, nor are we in a position to provide additional information at this time." *Id.*

II. Status of the State Department Inspector General's Report

The State Department Office of Inspector General ("OIG") reports as follows with respect to the status of its investigation regarding former Secretary Clinton's use of a private server: In April 2015, OIG's Office of Evaluations and Special Projects began a review of State's policies and procedures concerning the use, if any, by the past five Secretaries (Albright through Kerry) and their immediate staffs of non-departmental hardware and software to conduct official business. The review is assessing, among other matters, efforts undertaken by State to ensure that: (i) communications were and are conducted securely; (ii) government records were and are properly identified and preserved; and (iii) government records were and are properly processed pursuant to the FOIA. OIG expects to issue multiple reports on these issues in the coming months.

OIG has already issued a series of memoranda in conjunction with the Inspector General for the Intelligence Community ("ICIG"), which are publicly available on OIG's website. In June 2015, OIG and ICIG conducted a review of the process that State was using to release former Secretary Clinton's emails under the FOIA. As a result of this joint review, on July 6, 2015, ICIG referred to the FBI's Counterintelligence Division issues associated with the classification of emails and documents by former Secretary Clinton and her immediate staff, and the existence of such classified information on the former Secretary's personal server.

III. Timetable for Completion of Ongoing Searches and Information About the Volume of Documents from Cheryl Mills and Huma Abedin

State anticipates that it will complete by October 20, 2015 the remaining searches of documents that are in State's possession and will then have a basis to estimate the volume of potentially responsive records that will require further review. This timeframe takes into account

the volume of additional documents State has received from Ms. Mills and Ms. Abedin, as discussed below, and the revised searches State is conducting, using the search terms and date range agreed upon by the parties, of the State Department offices and agency records systems that were initially searched (most of which are completed). See Defendant's July 30, 2015 Status Report (ECF No. 17) at 3. On September 18, 2015, State produced to Plaintiff 48 pages of responsive records from these offices and record systems.

In August and September 2015, Ms. Mills and Ms. Abedin, through counsel, provided State with additional emails from non-state.gov accounts. Ms. Mills delivered additional materials to State on August 10 and 12. On August 10, the Department received 120 megabytes of electronic files containing 666 email files and 106 attachment folders. On August 12, the Department received 100 megabytes of electronic files and hard copy documents consisting of approximately one cubic foot of paper records, comprising an estimated 3,000 pages. Ms. Abedin delivered additional materials to State on August 7 and September 1. On August 7, the Department received 35.5 megabytes of data consisting of one PDF file containing 2,185 pages of documents. On September 1, the Department received 1.4 gigabytes of electronic files containing 348 pages of documents and 6,714 emails. Further information regarding the documents received from Ms. Mills and Ms. Abedin is contained in the September 18 status report filed in Leopold v. State (C.A. no. 15-cv-123-RC), attached hereto as Exhibit D.

State is conducting searches of these newly provided documents, using the search terms and date range agreed upon by the parties. It searched Ms. Mills' August 10 production and found no responsive records, and it searched Ms. Abedin's August 7 production and likewise

found no responsive records.¹ State proposes to file a status report by October 26, 2015 in which it would propose a production deadline for any potentially responsive, non-exempt records based on the volume of responsive records identified by the search.

Dated: September 21, 2015

Respectfully submitted,

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¹ The same is true for the documents that Ms. Mills and Ms. Abedin provided to State prior to August 2015. See July 30 Status Report at 2.