

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA
DAVID VITTER, LOUISIANA
DAVID A. PERDUE, GEORGIA
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

October 31, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey, Jr.
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Comey,

Thank you for your letter on Friday informing the Committee of the new information in the Clinton email investigation. Your letter indicated that the FBI learned in an “unrelated case” of the existence of new emails pertinent to the Clinton inquiry and that you believed the FBI should take additional investigative steps to enable the new evidence to be reviewed.

It is unclear from your letter what those additional investigative steps are, why they are necessary in order to review the emails, and whether they might include compulsory legal process dependent on the approval of prosecutors at the Department of Justice, such as seeking a search warrant. On May 17, 2016, I wrote to you expressing concerns about the appearance that political appointees at the Justice Department might be withholding approval for the FBI to seek search warrants and grand jury subpoenas. These standard investigative tools are usually approved in criminal investigations of this scope and importance. However, it remains unclear to this day whether the FBI requested the use of a grand jury in the Clinton email investigation to compel documents and testimony, and if so whether the Department of Justice denied that request. These concerns are only magnified by these latest developments.

If the FBI is denied the ability to gather evidence through compulsory means, Secretary Clinton and her aides have enormous leverage to negotiate extraordinary concessions in exchange for voluntary cooperation. This has already happened in the course of this investigation. For example, my staff has reviewed the agreements whereby the Justice Department agreed to limit its search of laptops from two of her senior aides to an extremely narrow scope and then destroy the laptops when the search was complete. The scope of the agreed-upon search was so narrow that it prevented review of emails during a time period in which the aides may have engaged in deleting emails relevant to investigations being conducted

by both the FBI and Congress. In addition, it was recently reported that agents investigating potential corruption at the Clinton Foundation were denied access to emails obtained by the FBI in this investigation because of the limited-use agreement through which they were obtained. Needless to say, it is disturbing if political appointees at the Department of Justice are inappropriately withholding compulsory tools from the FBI, forcing agents to depend on a subject or target's consent to gather evidence, which undercuts the FBI's ability to do its job and ultimately obtain justice.

According to news reports following your letter, the "unrelated case" that you referenced is an investigation of senior Clinton aide Huma Abedin's husband, Anthony Weiner and his communications with a minor. What remains unclear is how the FBI obtained the device that led to the discovery of the new emails and what the FBI knows about the content of the new emails.

You clearly faced a difficult decision about whether, what, and how much to disclose about this new information. Any choice could be seen as affecting the election. Some critics of your decision to update your testimony to Congress are inexplicably calling on you with their next breath to release even more information. While I disagree with those who suggest you should have kept the FBI's discovery secret until after the election, I agree that your disclosure did not go far enough. Unfortunately, your letter failed to give Congress and the American people enough context to evaluate the significance or full meaning of this development.

Without additional context, your disclosure is not fair to Congress, the American people, or Secretary Clinton. The factual context is important. In addition, it is critical for the public to know whether the FBI has requested from the Justice Department vital investigative tools such as grand jury subpoenas and search warrants and whether it has been denied access to them. In the absence of additional, authoritative information from the FBI in the wake of your vague disclosure, Congress and the American people are left to sift through anonymous leaks from Justice Department officials to the press of varying levels of detail, reliability, and consistency. The American people deserve better than that.

Accordingly, please respond to the following questions no later than November 4, 2016:

1. Has anyone at the FBI had the ability to read any of the content of the newly discovered emails? If not, then how do you know that they appear to be pertinent to the FBI's inquiry? If so, does any of the content upon initial review suggest obstruction of or false statements to Congress or the FBI by Secretary Clinton or her senior aides? Please explain.
2. What time frame do the newly discovered emails cover and approximately how many are there?
3. Is there any preliminary information to suggest that a significant number of the newly discovered emails are duplicates of emails already reviewed by the FBI?
4. Did the FBI obtain the device(s) through which it learned of the existence of new emails mentioned in your letter on Friday through compulsory process? If so, please describe

the nature and scope of the process in detail. If not, then how did the FBI learn of the existence of the new emails mentioned in your letter?

5. At any point in the Clinton email investigation, did the FBI request use of a grand jury from the Justice Department? If not, why not? If the Department declined, please describe the circumstances in detail. Who at the Justice Department made that decision and what grounds were given for the denial?
6. At any point in the Clinton investigation, did the FBI request an application for a search warrant from the Justice Department? If not, why not? If so, what was the Department's response? If the Department declined, please describe the circumstances in detail. Who at the Justice Department made that decision and what grounds were given for the denial?
7. According to news reports, the FBI has recently obtained a search warrant for the emails in question. If those reports are accurate, please provide the Committee with copies of the material provided to the court in support of the warrant, including any affidavits executed by FBI personnel.
8. According to news reports, the FBI has also been conducting a criminal inquiry involving the Clinton Foundation. Yet, Justice Department officials reportedly denied the FBI's request for a grand jury in that matter and pressured senior FBI officials not to pursue the matter through other means. Is it true that the Department denied the FBI's request for a grand jury in the Clinton Foundation investigation?
9. Press reports also indicate that the Justice Department denied the FBI the ability to search the laptops of senior Clinton aides Cheryl Mills and Heather Samuelson for information related to the Clinton Foundation inquiry. Is it true that the FBI requested such a search of the Mills and Samuelson laptops, but DOJ denied that request? If the FBI did make such a request, was that request made before or after the Department executed its agreement with Mills and Samuelson for a narrow voluntary search and destruction of the laptops?
10. Please provide the committee with all records related to communications between FBI and DOJ officials regarding: (a) requests for any sort of court-supervised process, such as empaneling a grand jury or applying for a search warrant in connection with the Clinton email or Clinton Foundation investigations, or (b) the Mills and Samuelson laptops that were to subject of limited immunity agreements.

Please answer the questions according to their corresponding numbers. I anticipate that your written reply will be unclassified but some responsive documents may contain classified information. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by

any handling restrictions or instructions on unclassified information unilaterally asserted by the Executive Branch.

Thank you in advance for your cooperation with this request. If you have questions, contact Jason Foster of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary