

Congress of the United States

Washington, DC 20515

March 9, 2016

The Honorable I. Charles McCullough, III
Inspector General
Office of the Inspector General
of the Intelligence Community
Washington, DC 20511

The Honorable Steve A. Linick
Inspector General
Office of the Inspector General
Department of State
Washington, DC 20520

Dear Inspectors General McCullough and Linick:

We write today to emphasize that, pursuant to the Inspector General Act of 1978, we expect all Inspector General investigations—including your review into the email practices of the past five Secretaries of State and their immediate staffs—to be impartial, independent, and diligent.

Based on public reports and communications from your offices to Congress, we have serious questions about how this review is being conducted.

First, last week a potential whistleblower in the office of the State Department Inspector General publicly accused the office of having an “anti-Clinton” bias.

Second, a number of allegations about the classification of specific emails made by the office of the Intelligence Community Inspector General (IC IG) appear to have been reached in error and contained inaccuracies. For example, on August 11, 2015, the IC IG transmitted to several congressional offices copies of emails containing purported classified information. Since then, it has become clear that at least one of those emails did not in fact contain classified information, and the initial claim that another email was highly classified was reversed.

Classification determinations are complex, subjective, often in dispute between different agencies, and are not normally within the purview of Inspectors General. We are concerned that those involved in the review process have not sufficiently taken these complexities or the interagency differences on each email into account.

We understand that some of the disputes regarding email classification may stem from the fact that, as part of its routine Freedom of Information Act (FOIA) review process prior to publicly releasing internal communications, interagency disputes often

arise based on differing agency views and equities. For example, the State Department frequently obtains information through entirely unclassified channels that an intelligence agency may obtain through clandestine means. A classification review of the information by an intelligence agency may therefore lead to a different result than when the same information is reviewed in parallel by the State Department. This is a frequent occurrence in the FOIA review process.

Given the importance of the integrity of this review, we ask that any future releases of information by your offices be accurate, impartial, and complete. We also expect written communications regarding your offices' review to be precise and impartial. Any information provided to Congress—whether verbally, in draft or preliminary form, or in final reports—must be provided on a bipartisan basis and conveyed to both majority and minority staff at the same time.

Already, this review has been too politicized. We are relying on you as independent inspectors general to perform your duties dispassionately and comprehensively.

To better understand the ongoing reviews by both of your offices, we have enclosed specific questions, and we request that you provide responses by March 31, 2016. If you have any questions, please feel free to contact our staff. Thank you for your attention to this matter.

Sincerely,



Dianne Feinstein



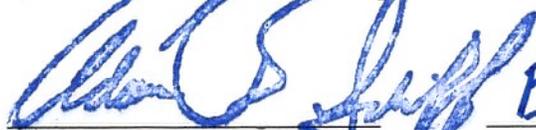
Patrick Leahy



Thomas R. Carper



Benjamin L. Cardin



Adam B. Schiff



Eliot L. Engel



Elijah E. Cummings

cc: Honorable John F. Kerry, Secretary of State
Honorable James R. Clapper, Director of National Intelligence
Honorable Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency

Questions for the Inspector General of the Intelligence Community and the Inspector General of the State Department

1. Other than through official press statements, has the Inspector General or anyone in the IC IG's office or the State Department IG's office—with the knowledge of either office—provided any information regarding the review of former Secretary of State Clinton's emails (hereinafter the "review") to the news media? If so, please detail (a) who was contacted, (b) who made the contact, (c) when the contact was made, (d) the purpose of the contact, and (e) the content of all of the information provided.

2. Have the offices of the IC IG and the State IG given any information—written or verbal—regarding the review to majority Congressional members or staff (including any to the House Select Committee on Benghazi) that your offices have not made available, simultaneously, to minority Congressional members or staff? If so, please provide a description of the information, when it was provided, and to whom it was sent, as well as an explanation as to why it was not furnished to staff on a bipartisan basis.

3. On July 23, 2015, the IC IG provided an unclassified communication to Congress regarding the review stating that the office's "limited sampling" of the emails identified that allegedly "four contained classified [Intelligence Community] IC information." What were the methods and procedures used by the IC IG to search Secretary Clinton's emails? Please describe the "limited sampling," including any keywords or term searches used, and the process which led to the claim that classified information was contained in the four emails initially identified by the IC IG. Please also describe any subsequent or final classification determinations for the four emails referenced on July 23, 2015.

4. In the July 23, 2015 unclassified communication to Congress, the office of the IC IG stated that State Department personnel continue to deny that information publicly released through the FOIA process was classified, despite a definitive determination from the Intelligence Community interagency FOIA process. What specific entity within the IC interagency FOIA process made this definitive determination? Was this or any other determination subsequently changed?

5. The State Department has implemented recommendations that the Intelligence Community provide reviewers to assist in identifying potential Intelligence Community equities in former Secretary Clinton's email. Does this recommendation also apply to all other FOIA matters at the State Department and at all other agencies that may potentially have had access to classified information? If not, please explain what makes the review of the Secretary Clinton emails different than the review for other FOIA matters.

6. Were the disagreements raised between the State Department and the Intelligence Community regarding the classification of information in former Secretary Clinton's emails resolved through the procedures listed in Executive Order 13526, to include the process listed in Sec. 1.8 ("Classification Challenges") and Sec. 5.3 ("Interagency Security Classification Appeals Panel")? Please explain.
7. Does the Intelligence Community have any guidelines, policies or procedures that apply to its classification determinations to take into consideration whether information was obtained outside of the Intelligence Community through unclassified sources and information or already officially in the public domain? Does the State Department have guidelines, policies, or procedures governing use of information obtained outside of intelligence channels, from unclassified discussions, or from the public domain?
8. The IC IG recommended that the State Department seek classification expertise from the interagency to act as a final arbiter if there is a question regarding potentially classified materials. To the extent there were ongoing disputes as to whether emails include classified information derived from the IC, what specific entity within the interagency adjudicated disputes regarding classification, and what process did this entity use to adjudicate these disputes?
9. If an agency raises a concern that an Intelligence Community entity made a mistake in a classification determination, what specific entity within the interagency would review that classification determination and what procedures apply to any such review? Is there an appeal procedure available?
10. Are you aware of any instance in which the content of any of former Secretary Clinton's emails was determined to be classified on the basis of similar information being included in a classified intelligence product that was dated after the email was written?
11. In public reporting last week, a State IG employee alleged there was a partisan bias in the review by the office of the State IG. What are the policies and procedures for employees of the State IG or IC IG to report concern regarding ongoing investigations within your offices? What are your policies and procedures for when an employee who has a conflict of interest—or an appearance of any conflict or impropriety—must recuse him or herself from a matter? Have any employees been recused from this review so far?
12. The February 3, 2016 Memorandum for Under Secretary Kennedy prepared by the State IG confirms that emails to the personal email accounts of Secretary Powell and Secretary Rice's immediate staff contained classified information. Are the State IG and

the IC IG using the same standards to evaluate these emails and review them, and refer them to the proper officials, in the same manner as Secretary Clinton's emails?

13. Please describe the process by which you arrived at the answers to the above questions, including whether you consulted with all staff in your offices involved in this review to ensure all responses are complete and accurate.