

POLITICO

2016

Judge explodes over Hillary email delays

A district court judge says he can't understand why the State Department dragged its feet responding to Freedom of Information Act requests.

By **RACHAEL BADE** | 07/29/15 10:16 PM EDT | Updated 07/30/15 12:21 PM EDT



An irritated federal judge Thursday put the Hillary Clinton email scandal into stark terms, grilling the State Department on a pattern of delayed document releases that has turned a possible bureaucratic logjam into a major problem for the leading Democratic presidential contender.

U.S. District Court Judge Richard Leon, known for his blunt manner, said he simply did not understand why the State Department has dragged its feet on responses for emails in requests to the Freedom of Information Act.

“Now, any person should be able to review that in one day — one day,” the judge said, examining a request for just over 60 emails. “Even the least ambitious bureaucrat could do this.”

Leon articulated what has been a major concern of State Department critics who contend that the agency is dragging out responses to FOIA requests to protect Clinton, who served as secretary of state during President Barack Obama’s first term. The judge’s complaints echoed those of Hill Republicans, who have accused the agency of slow-walking document requests in its Benghazi investigation to protect Clinton.

More Clinton emails are expected to be released Friday under a court-ordered process that has underscored Leon’s unhappiness.

And in a twist, State also revealed holes in its own federal record as officials said they were still awaiting some work-related emails from Clinton’s top department brass, including Huma Abedin, Jake Sullivan and Cheryl Mills.

One of them, Clinton’s former spokesman, Philippe Reines, for example, on Tuesday turned over 20 boxes of work-related emails taken in part from a personal email account, calling into question the extent to which top aides to the former secretary of state also engaged in controversial email practices.

“I can’t say that I — State Department doesn’t have a master record-keeping system,” answered State Department top document official John Hackett, who heads FOIA requests for the agency, when asked whether he believed State’s record-keeping procedures captured needed government documents. “I can’t say that.”



ALSO ON POLITICO

Hillary's former spokesman turns over 20 boxes of emails

RACHAEL BADE

Clinton’s admission that she dealt with both personal and official emails through a private unsecured server, using a self-screening technique to determine which ones the public may see, has touched off FOIA lawsuits from the media, a heated congressional inquiry and campaign complaints about her secrecy.

The 2016 Democratic presidential candidate has been criticized for exclusively using personal email while serving as the nation's lead diplomat. Clinton's use of a home-brewed server was unearthed after Hill Republicans opened a special investigative panel to dig into the 2012 Benghazi, Libya, terrorist attack.

Since then, Clinton has faced questions about her treatment of classified information and her secrecy.

But the court hearing suggests such controversial practices may have extended beyond her.

Hackett told a federal judge in a court hearing Wednesday that Reines was among several officials asked to turn over any work-related documents in his possession. He said State couldn't produce all documents requested by The Associated Press — including some related to Abedin's role as a "special government employee" — in part because the agency is still awaiting responses from top aides.

Hackett did not say whether the requested documents were from a personal account or State.gov account — though the government would presumably already have copies of the latter on a backup system.

The Reines revelation calls into question the extent to which Clinton's aides relied on personal emails for official business, which potentially violates government record-keeping and transparency rules.

The former deputy assistant secretary of state for strategic communications handed over 20 boxes, according to a Justice Department lawyer.

The Benghazi panel has also uncovered instances in which top aides seemed to be writing from personal email addresses.

A lawyer for Reines told POLITICO many of the documents won't likely be classified as federal records but that he was "over-inclusive in providing material to the Department — in hard copy as the regulations call for — so that the Department could decide what to retain and what to return."

ALSO ON POLITICO

Hillary Clinton to call for lifting Cuba embargo

**DANIEL STRAUSS**

Reines himself did not wish to comment for this story, but earlier this year he took Gawker to task for publishing a report suggesting he used personal email for work purposes.

Hackett said Reines sent over the document boxes with a cover letter, suggesting they contained a hodgepodge of work-related items also mixed with personal messages. Seeking clarification, the judge asked Hackett whether Reines was “asked to produce in his personal email system, federal records ... and he produced 20 boxes of emails in his personal emails. Is that” Hackett’s understanding?

Hackett said it was.

A source familiar with what was produced told POLITICO the bulk of what was turned over were news clips forwarded to staff from an outside vendor, which ran between 125 and 150 pages worth of stories each day. The source said those went to both Reines’ official and personal email accounts, leading to boxes upon boxes.

During Leon’s court hearing — part of an ongoing lawsuit filed by the AP that charges the agency with failing to respond to FOIA requests — the State Department often underscored that it does not have a complete record yet of Clinton’s top staff.

During the hearing, Leon grilled the department for failing to respond to the news wire’s requests, vowing to issue a court order to force it to hand over documents more quickly.

The AP had requested documents relating to Abedin’s quasi-government employment status that allowed her to advise Clinton but also work in the private sector. It also asked for Clinton’s schedules, appointments and call logs, among other items.

Leon, a George W. Bush appointee, said he couldn’t understand why State couldn’t simply hand over nearly 5,000 pages of documents relating to Clinton’s schedule.

Hackett explained that although he has 60 full-time staffers working FOIA requests,

they handle only paperwork. The actual reviews of emails and memos by which they are approved for public release, are done by a mere 40 former Foreign Services officers — all of whom work part-time.

The judge was flabbergasted: “Is Congress aware that people who do all [State] FOIA requests are part-timers?”

When Hackett suggested the system works well enough, the judge said that’s a “matter of perception.”

“State has been criticized for how slow it is ... surely you know this.”

Hackett told the judge his staff reviews for release each month about 700-plus pages worth of documents. Come next year, he hopes to increase that to 1,800 to 1,900 pages a month, “a stretch for us.”



ALSO ON POLITICO

Hillary Clinton: Planned Parenthood videos 'disturbing'

ELIZA COLLINS

Hackett said State Department budget restrictions have made hiring additional reviewers unaffordable. Plus, information requests have exploded by 300 percent since 2008, he added. And some of the documents include classified information, he said, which lengthens response times because of involvement from other agencies.

During the hearing, Hackett pointed out that State doesn’t have all the relevant emails for requested searches, suggesting use of personal email may also be tripping up the Department.

“We’re doing our utmost, your honor ... given our limited resources,” Justice Department attorney Lisa Ann Olson said, defending Hackett.

But AP lawyer Jay Brown did highlight a problem, suggesting document production problems go beyond any tussle with former employees. He produced a March 25 response to an AP FOIA request that included only seven pages of documents. It reads: “We’ve now completed the processing of your request.”

Hackett acknowledged: “That would be inaccurate,” saying they’re still completing

the searches for documents that total in the thousands — a lot more than a handful.

Leon wanted to know who sent the letter.

The judge also demanded answers as to why a number of State bureaus failed to hand over documents when Hackett's office requested them in 2013. He specifically asked who — the names of State employees and their positions — so he could request a deposition on how the FOIA requests lapsed.

"Was it not understood that they were to search records?" he asked. "It appears they didn't get anything done for two years."

The AP and State had tentatively agreed that State will provide documents on a rolling basis through the end of 2015. But the judge encouraged the AP not to settle, criticizing State's production of documents and promising to issue a court order to speed it up.

"AP may want to re-evaluate its position ... before it commits to any schedule," he said. "In my judgment, this doesn't sound pressing enough."

Olson asked Leon for two weeks, rather than one, to answer follow-up questions — only because Hackett was due to be on "personal leave" next week, and she needed his signature.

Leon balked. Get it done before he leaves, he said — or find a way to work around it.

"Send it to him by express mail, and he'll send it back," he snapped. "Get it by next Wednesday."