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Local

U.S. judge orders discovery to go forward over Clinton's private email system



There are at least three ongoing investigations into Democratic presidential candidate Hillary Clinton's time as Secretary of State. Here's an explanation of who is investigating, and why. (Gillian Brockell/The Washington Post) <http://wapo.st/1Kg7WYw>

By [Spencer S. Hsu](#) February 23 at 4:02 PM

A federal judge on Tuesday ruled that State Department officials and top aides to Hillary Clinton should be questioned under oath about whether they intentionally thwarted federal open records laws by using or allowing the use of a private email server throughout Clinton's tenure as secretary of state from 2009 to 2013.

https://www.washingtonpost.com/local/public-safety/us-judge-weighs-deeper-probe-into-clintons-private-email-system/2016/02/23/9c27412a-d997-11e5-81ae-7491b9b9e7df_story.html

The decision by U.S. District Judge Emmet G. Sullivan of Washington came in a lawsuit over public records brought by Judicial Watch, a conservative legal watchdog group, regarding its May 2013 request for information about the employment arrangement of Huma Abedin, a longtime Clinton aide.

Officials with the State and Justice departments said that they were aware of the order but declined to comment further, citing the ongoing litigation. Discovery orders are not readily appealable. An attorney for Abedin declined to comment.

Sullivan set an April 12 deadline for parties to litigate a detailed investigative plan--subject to court approval--that would reach well beyond the limited and carefully worded explanations of the use of the private server that department and Clinton officials have given.

Sullivan also suggested from the bench that he might at some point order the department to subpoena Clinton and Abedin to return all emails related to **Clinton's** private account, not just records their camps previously deemed work-related and returned.



Clinton has come under fire for using a private email address during her time as secretary of state. The emails are being screened and released in batches. Here are some things we've learned from them.

Top-secret information in e-mails Democratic presidential candidate Hillary Clinton has previously stated that classified information never traveled across her private server. However, the State Department has acknowledged that "top secret" information was in seven email chains sent or received by her. Richard Drew/AP



Worries about exclusion from cabinet meeting. Clinton worried about being excluded from the Cabinet. "I heard on the radio that there is a Cabinet mtg this am," she wrote in an email to aides. "Is there? Can I go? If not, who are we sending?" The meeting turned out to be for lower-level staff. (Pete Souza/The White House)



2012 Benghazi attacks. Aides were concerned about Clinton's image following the 2012 Benghazi attacks, according to Reuters. They discussed media coverage of Clinton in the aftermath of the incident and Clinton's "careful" wording in discussing the attacks. (Esam Omran al-Fetori/Reuters)



Comparison with former secretary of state Kissinger. Clinton worried that she saw President Obama only once a week, while Henry Kissinger had daily access to Richard Nixon. "Of course, if I were dealing w that POTUS I'd probably camp in his office to prevent him from doing something problematic," she added in an email to aide. (Philippe Reines. AP)



Top officials knew about the private e-mail address . . . Obama senior adviser David Axelrod denied having known about the private email address. But the batch releases show that top officials, including Axelrod and then-White House chief of staff Rahm Emanuel, used the address to correspond with Clinton. (Andrew Burton/Getty Images)



. . . but the State Department's IT department was in the dark. The State Department's IT department did not know about Clinton's private email address and had inquired about why a correspondent was receiving an error when trying to send a message to the address. The tech support team "didn't know it was you," an aide told Clinton. (iStock)



The importance of Sidney Blumenthal. Confidante Sidney Blumenthal played a much bigger role for Clinton than previously known. Although the Obama administration blocked his hire, he was kept on the Clinton Foundation payroll, and Clinton relied on him for foreign policy advice. In one email, he called incoming Speaker of the House John Boehner a “louche, alcoholic, lazy.” (Susan Walsh/AP)



Chelsea Clinton's scathing report on Haiti. After a four day trip to the earthquake-ravaged areas of Haiti, Chelsea Clinton wrote a seven page email to her parents about the “mind-numbing” incompetence, urging that major changes were needed. “To say I was profoundly disturbed by what I saw — and didn't see — would be an understatement,” she wrote. Here, former president Bill Clinton and daughter Chelsea in Haiti shortly after the disaster. (Lynne Sladky/AP)



Fax machine difficulties. Many of the emails included mundane exchanges, including a conversation between Clinton and longtime aide Huma Abedin on how to use a fax machine, which Clinton could not work after multiple tries. (iStock)

“There has been a constant drip, drip, drip of declarations. When does it stop?” Sullivan said, “This case is about the public’s right to know.”

In granting Judicial Watch’s request, Sullivan said that months of piecemeal revelations about Clinton and the State Department’s handling of the email controversy created “at least a ‘reasonable suspicion’ ” that public access to official government records under the federal Freedom of Information Act was undermined.

Sullivan noted that there was no dispute that senior State Department officials were aware of the email set-up from time Clinton took office, citing a January 2009 email exchange including Undersecretary for Management Patrick F. Kennedy, Clinton chief of staff Cheryl D. Mills and Abedin about establishing a “stand-alone network” email system.

Sullivan said the State Department’s inspector general last month faulted the department and Clinton’s office for overseeing processes that repeatedly allowed “inaccurate and incomplete” FOIA responses, including a May 2013 reply that found

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“no records” concerning email accounts Clinton used, even though dozens of senior officials had corresponded with her private account.

In a statement, Judicial Watch President Thomas J. Fitton **called the ruling “a major victory” for the public, and did not rule out that Clinton could become one of the current and former department officials whose testimony his group would seek.**

“The court-ordered discovery will help determine why the State Department and Mrs. Clinton, even despite receiving numerous FOIA requests, kept the record system secret for years,” Fitton said. “While Mrs. Clinton’s testimony may not be required initially, it may happen that her testimony is necessary for the Court to resolve the legal issues about her unprecedented email practices.”

Sutton’s group in court filings did not ask to depose Clinton by name, but targeted requests at those who handled her transition, arrival and departure from the department and who oversaw Abedin, a direct subordinate.



Republican presidential candidates like Sen. Ted Cruz and Sen. Marco Rubio are weighing in on the State Department's Jan. 29 announcement that some of the emails sent on former Secretary of State Hillary Clinton's private email server contained top secret information. (Reuters).

<http://wapo.st/1ZZNpc9>

Sullivan's decision came as Clinton seeks the Democratic presidential nomination and three weeks after the State Department acknowledged for the **first time** that "top secret" information passed through the server.

[State Department says Hillary Clinton's email correspondence contained 'top secret' material]

The FBI and the department's inspector general are continuing to look into whether the private setup mishandled classified information or violated other federal laws.

For six months in 2012, Abedin was employed simultaneously by the State Department, the Clinton Foundation, Clinton's personal office and a private consulting firm connected to the Clintons.

[How Huma Abedin operated at the center of the Clinton universe]

https://www.washingtonpost.com/local/public-safety/us-judge-weighs-deeper-probe-into-clintons-private-email-system/2016/02/23/9c27412a-d997-11e5-81ae-7491b9b9e7df_story.html

The department stated in February 2014 that it had completed its search of records **for the secretary's office. After Clinton's exclusive use of a private server was made** public in May, the department said that additional records probably were available.

In pursuing information about Abedin's role, **Judicial Watch argued that the only** way to determine whether all official records subject to its request were made public was to allow it to depose or submit detailed written questions about the private email arrangement to a slew of current and former top State Department officials, Clinton aides, her attorneys and outside parties.

Justice Department lawyers countered in court that the State Department is poised to finish publicly releasing all 54,000 pages of emails **that Clinton's attorneys** determined to be work-related and that were returned to the State Department at its request for review.

The case before Sullivan, a longtime jurist who has overseen other politically contentious FOIA cases, is one of more than 50 active FOIA lawsuits by legal groups, news media organizations and others seeking information included in emails sent to or by Clinton and her aides on the private server.

The State Department has been releasing Clinton's newly recovered correspondence in batches since last summer with a final set due Monday.

Meanwhile, former Clinton department aides Mills, Abedin, Jacob Sullivan and Philippe Reines have returned tens of thousands of pages of documents to the department for FOIA review, with releases projected to continue into at least 2017.

The State Department also has asked the FBI to turn over any of an estimated **30,000 deleted emails deemed personal by Clinton's attorneys that the FBI is able to** recover in its investigation of the security of the private email server.

“There can be no doubt that [the State Department’s] search for responsive records has been exceedingly thorough and more than adequate under FOIA,” according to filings by Justice Department civil division lawyers, led by Principal Deputy Assistant Attorney General Benjamin C. Mizer.

They argued that FOIA requires the agency to release records only under its control — not under the control of its current or former officials — **and that “federal employees routinely manage their email and ‘self-select’ their work-related messages** when they, quite permissibly, designate and delete personal emails from their **government email accounts.”**

Sullivan’s decision will almost certainly extend through Election Day an inquiry that has dogged Clinton’s campaign, frustrating allies and providing fodder to Republican opponents.

FOIA law generally gives agencies the benefit of the doubt and sets a high bar for **plaintiffs’ requests for discovery. However, one similar public records battle during Bill Clinton’s presidency lasted 14 years and led to depositions of the president’s** White House counsel and chief of staff.

Because of the number of judges hearing the FOIA cases, there is likewise a chance **that the fight over Hillary Clinton’s emails could “take on a life of their own,” not ending “until there are endless depositions of top [agency] aides and officials, and just a parade of horrors,”** said Anne L. Weismann, executive director of the Campaign for Accountability. Weismann also is a former Justice Department FOIA litigation supervisor who oversaw dozens of such fights from 1991 to 2002.

Still, she said, such drawn-out legal proceedings could be valuable if they shed light on whether the State Department met its legal obligations under open-government laws or systematically withheld releasable records.

Last month, one of Sullivan's colleagues, U.S. District Judge James E. Boasberg, dismissed lawsuits brought by Judicial Watch and the Cause of Action Institute that sought to force the government to take more **aggressive steps to recover Clinton's** deleted emails under the Federal Records Act.

Plaintiffs "cannot sue to force the recovery of records that they hope or imagine might exist," Boasberg wrote Jan. 11, adding that, to date, recovery efforts by the State Department and the National Archives under that law **"cannot in any way be described as a dereliction of duty."**

The server's existence was disclosed two years after Clinton left, in February 2013, as secretary of state and as the department faced a congressional subpoena and media requests for emails related to scores of matters, including attacks that killed a U.S. **ambassador in Benghazi, Libya, and fundraising for the Clinton family's global** charity.

[Clinton receives key endorsement, but faces new questions]

In seeking records related to Abedin's employment, Judicial Watch asked to be allowed to depose or submit written questions to current and former State Department employees and Clinton aides, including Kennedy; John F. Hackett, director of information services; Executive Secretary Joseph E. Macmanus; Clinton's chief of staff, Mills; lawyer David E. Kendall; Abedin; and Bryan Pagliano, a Clinton staff member during her 2008 presidential campaign who helped set up the private server.

More broadly, the group's motion targets who oversaw State Department information systems, Clinton's transition and arrival at the department, her communications, and her and Abedin's departure from the agency.

“**What emails . . .** were deleted . . . who decided to delete them, and when?” Judicial Watch asks in filings.

The group also asks whether any archived copies of sent or received emails on the private server existed, including correspondence with Clinton technology contractors Platte River Networks and Datto.

Rosalind S. Helderman contributed to this report.



Spencer S. Hsu is an investigative reporter, two-time Pulitzer finalist and national Emmy award nominee.

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